UNITED
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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 2000

Note by the Secretary-General

1. In accordance with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the States parties shall submit to the Committee against Torture, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under the Convention, within one year after the entry into force of the Convention for the State party concerned. Thereafter the States parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. Accordingly, initial reports under article 19, paragraph 1, of the Convention are due in 2000 from eight States parties, on the following dates:

Belgium	25 July 2000
Bolivia	11 May 2000
Burkina Faso	2 February 2000
Japan	29 July 2000
Mali	27 March 2000
Mozambique	14 October 2000
South Africa	8 January 2000
Turkmenistan	25 July 2000

3. The reports received from the States parties listed above will be issued as addenda to this document.

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Addendum

BOLIVIA

[16 May 2000]

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* The annexes are available for consultation in the files of the secretariat.

I. INFORMATION OF A GENERAL NATURE

1. The Republic of Bolivia is situated in the South American part of the American Continent. It borders to the north and east on Brazil, to the south-east on Paraguay, to the south on Argentina, to the south-west on Chile and to the west on Peru. Its capital is Sucre. It has approximately 7 million inhabitants and a constitutional system of government.

A. General legal framework within which torture is prohibited and eliminated

1. Political Constitution of the State of Bolivia

2. With Act No. 1,473 of 1 April 1993 (need to reform the State Constitution Act), Bolivia expressed the political will to strengthen the institutions embodying the rule of law and democratic system, with the creation, for instance, of the Ombudsman, the Constitutional Court and the Judicature Council, through a lengthy constitutional procedure set out in articles 230 and 231 of the Constitution. The constitutional reform process continued with Act No. 1,585 of 12 August 1994 (Act reforming the State Constitution), passed by the National Congress and consolidated by the reform introduced with Act No. 1,615 of 6 February 1995 (Act adjusting and harmonizing the State Constitution) giving effect to the Constitution.

3. Some key points may be identified in the Constitution relating to the matter of torture and other cruel, inhuman or degrading treatment or punishment.

4. Article 12 of the Constitution states:

> "Any kind of torture, coercion, extortion or other form of physical or moral violence is prohibited, under penalty of immediate removal from office and without prejudice to the sanctions that may be incurred by anyone who applies, orders, instigates or consents to them."

5. Article 17, paragraph 1, provides:

> "The penalties of infamy and civil execution are prohibited. Murder, parricide and treason are punishable by 30 years' imprisonment, without the right of pardon."

6. The above article is consistent with article 34 of the Constitution, which states: "Anyone who violates constitutional rights and guarantees shall be subject to ordinary justice."

7. Furthermore, article 127, paragraph 1, states with regard to the Ombudsman: "He is also responsible for protecting, promoting and disseminating information on human rights."

2. Code of Criminal Procedure

8. The Code of Criminal Procedure was promulgated with Act No. 1,970 of 25 March 1999 and published on 31 May of that year. The Code is currently in the vacatio legis stage and will take full effect on 31 May 2001. The following articles of the Code are of relevance to torture.

9. Article 13 (Legality of evidence) states:

"Evidence shall be considered valid only if obtained by lawful means by a procedure in conformity with the provisions of the State Constitution and of this Code.

Any evidence obtained by torture, ill-treatment, coercion, threats, deceit or violation of the fundamental rights of the person, or obtained through information originating in an unlawful procedure or means, shall be disqualified."

10. Article 93 (Prohibited methods of obtaining statements) further states:

"In no event shall the accused be placed under oath, nor be subjected to any form of coercion, threat or promise, nor shall any means be used to oblige, induce or instigate him to make a statement against his will; nor shall any charges be brought against him to obtain a confession.

Any statement made by the accused containing a confession of the offence which is not made in the presence of either the prosecutor or defence counsel shall be considered null and void and may not be used in court, without prejudice to the administrative responsibility of any persons receiving or using the statement.

If in the course of making the statement, signs of fatigue or anguish appear in the accused, the statement shall be suspended until such signs disappear.

In all cases the statement of the accused shall be completed within an appropriate period of time."

11. A further clause to consider is article 296 (Arrest). In cases where the Code of Criminal Procedure authorizes the arrest of the accused, police officers must abide by the following basic principles in their actions: paragraph 3 prohibits inflicting, instigating or tolerating any act of harassment, torture or other cruel, inhuman or degrading treatment or punishment, both at the time of arrest and during the time of detention.

12. Article 299 concerning the supervision of detainees by the Public Prosecutor's Office provides that when the prosecutor visits the police premises, he must check the physical condition of the accused and the strict observance of all his and other rights.

3. Penal Code

13. The Penal Code was approved by Decree Law No. 10,426 of 23 August 1972, which was raised to the status of an Act and subsequently amended by Act No. 1,768 of 10 March 1997 and again by Act No. 2,033 of 29 October 1999, published on 2 December 1999.

14. The following are among the most relevant articles of the Code:

Article 295 (Harassment and torture): "Any official who harasses a detainee or allows him to be harassed shall be punished with imprisonment for between six months and two years.

If the official inflicts any kind of suffering or torture on the detainee, the penalty shall be increased to between two and four years of imprisonment.

If the torture causes injuries, the penalty shall be imprisonment for between two and six years; if it causes death, the penalty shall be 10 years' rigorous imprisonment."

Article 308 (Rape): "Any person who, by using physical violence or intimidation, obtains carnal access to a person of either sex, achieving anal or vaginal penetration or introducing objects for libidinous purposes, shall be liable to imprisonment for between 5 and 15 years.

Any person committing the above offences, even without the use of physical violence or intimidation, but taking advantage of the mental disability, seriously disturbed condition or serious mental deficiency of the victim, or if the latter is unable to resist for any other reason, shall be liable to imprisonment for between 15 and 20 years."

Article 308 bis (Rape of a child or adolescent): "Whoever obtains carnal access to a person of either sex below the age of 14, through anal or vaginal penetration or by introducing objects for libidinous purposes, shall be punished with imprisonment for between 15 and 20 years, without entitlement to pardon, even without the use of force or intimidation and even where consent is alleged.

This penalty shall not apply to consenting relations between adolescents above the age of 12, provided that the age difference between them is not greater than three years and that no violence or intimidation has been used."

Lastly, article 321 bis (Trafficking in persons): "Whoever shall bring about, promote or encourage the entry into or exit from the country or movement within it of persons to engage in prostitution, by means of deceit, violence or threats, or renders them unconscious for this purpose, shall be punished with imprisonment for between 4 and 8 years. If the victims are aged under 18 years, the penalty shall be 5 to 10 years' imprisonment.

If the victim is under 14 years, the penalty shall be 6 to 12 years' imprisonment, even in cases where the circumstances referred to in the above paragraph do not apply."

B. International instruments

15. The Bolivian State respects its international commitments in the field of human rights, at both universal and regional level. The Universal Declaration and the American Declaration are binding on Bolivia's domestic legislation. The relevant articles are as follows:

1. Universal Declaration of Human Rights

16. There is essentially one relevant article, namely:

Article 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

2. American Declaration of the Rights and Duties of Man

17. Three articles in particular are binding in this respect, namely:

Article 1: "Every human being has the right to life, liberty and the security of his person."

Article 25: "Every individual who has been deprived of his liberty ... has the right to humane treatment during the time he is in custody."

Article 26: "Every person accused of an offence has the right ... not to receive cruel, infamous or unusual punishment."

18. In addition, Bolivia has subscribed to the following international human rights conventions and covenants which are consistent with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3. International Covenant on Civil and Political Rights

19. Bolivia acceded to this International Covenant by Supreme Decree No. 18,950 of 17 May 1982, deposited with the Secretary-General of the United Nations on 12 August 1982. The relevant articles are the following:

Article 4:

"1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8, (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision."

According to article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

4. American Convention on Human Rights: "Pact of San José, Costa Rica"

20. Bolivia acceded to the Convention by Supreme Decree No. 16,575 of 13 June 1979, while Major General David Padilla Arancibia was in office, and the instrument was deposited with the Secretary-General of the Organization of American States on 19 July 1979. The competence of the Inter-American Commission on Human Rights and the jurisdiction and competence of the Inter-American Court of Human Rights were recognized by Act No. 1,430 of 11 February 1993.

21. The following articles are particularly relevant:

Article 5

"1. Every person has the right to have his physical, mental and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

3. Punishment shall not be extended to any person other than the criminal.

4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.

6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners."

Article 27

"1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, colour, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: ... *Article 5 (Right to humane treatment)* ... or of the judicial guarantees essential for the protection of such rights."

C. Judicial, administrative or other competent authorities with jurisdiction over matters dealt with in the Convention

22. The Public Prosecutor's Office, under the terms of article 125.II of the Constitution, is responsible for directing judicial police proceedings. This means it is responsible for the investigation and verification of offences, the collecting of evidence, the arrest of suspects and their handover to the judges and courts for trial, and in the event, for exercising the public right of action.

23. According to article 3 of the Public Prosecutor's Office Act[1] (No. 1,469) of 19 February 1993, published on 25 March 1993, the Public Prosecutor's Office is responsible for investigating ex officio any abuse of authority, irregularities and offences committed by judges, judicial or police officers or public servants in the performance of their duties, and taking action according to the law. Police officers and any authority obtaining knowledge of a public offence shall proceed according to the law and shall immediately inform the Public Prosecutor's Office in conformity with their legal responsibility.

24. The Human Rights Commission established by the Honourable Chamber of Deputies is authorized under the Constitution to act in the capacity of Public Prosecutor's Office if mandated by the Legislative Chambers. This Commission generally acts in that capacity in appropriate cases requiring investigation or on the occasion of events of national importance. It also receives complaints of human rights violations. Once its investigations are complete, it hands over cases to the competent authority for trial.

25. The Ministry of Justice and Human Rights, under the terms of the Executive Power Organization Act, and the regulations and complementary rules pertaining thereto, is specifically responsible for implementing national policy on the defence, protection and promotion of human rights, supervising the implementation of the national legal order, and coordinating activities with the Judiciary, the Public Prosecutor's Office and the Ombudsman.

26. Within the Ministry, the Deputy Minister for Human Rights is specifically responsible for promoting human rights policies and standards, and for supervising the fulfilment of and respect for human rights in the public and private sectors.

27. The Ombudsman is responsible for protecting, promoting and disseminating information on human rights. One of his duties is to receive complaints from victims or from third parties for violations of human rights. His task is then to request a report from the authority or official accused, to investigate and, if an offence is ascertained, to hand over the case to the Public Prosecutor's Office or to issue a decision recommending or recalling observance of legal duties.

28. The criminal justice system includes examining courts and district courts. The former are authorized to hear cases and decide when non-custodial penalties apply and when the offence is punishable with imprisonment. If the sentence does not exceed two years, the court will issue

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[1] The Public Prosecutor's Office Bill, currently before the National Congress, will introduce significant changes to comply with the new Code of Criminal Procedure.

the initiating order in accordance with the provisions of the Code of Criminal Procedure of 1972. The district courts, sitting in plenary, hear and judge criminal cases referred to them by examining magistrates, as prescribed by the same Code; they also hear habeas corpus proceedings as provided for in the Constitution and current legislation.

29. It should be pointed out that the new Code of Criminal Procedure of 1999, which is partially in effect, establishes a different organizational structure. As it enters fully into force by 31 May 2001, legislative, organizational and administrative rules will be adjusted, while dissemination and training will be provided for the new Code.

D. Current situation as regards the practical implementation of the Convention

30. The Constitution makes provision for protection against torture, such protection being mandatory. The Code of Punishment characterizes torture as an offence, so that both public officials and private individuals must comply with this domestic law. As from last year, Bolivia's domestic legislation in this respect has been supplemented and strengthened with the Convention.

31. Since 1993 and the last constitutional reform (1995), the Public Prosecutor's Office has been an independent body, under the high authority of the Attorney-General, who supervises the investigation of offences and directly monitors any anomalies which may arise in the form of illegal or arbitrary detention, or especially serious offences such as torture, harassment and cruel and inhuman treatment.

32. The Ombudsman is responsible for visiting prisons and detention centres, without the need for prior authorization, in order to prevent human rights violations and, where necessary, institute proceedings, for instance, for habeas corpus, constitutional amparo or other, and in extreme cases refer to the competent authority to initiate the relevant proceedings for violation of a right or liberty.

33. Human rights sections have been set up in the security forces, the armed forces and the National Police, in order to monitor internally any departure from regulations.

II. INFORMATION IN RELATION TO EACH OF THE ARTICLES IN PART I OF THE CONVENTION

A. Articles 2 to 16

Article 2

Legislative measures

34. The following text has been incorporated in article 179 bis of the Penal Code: "(Failure to comply with decisions in habeas corpus and constitutional amparo proceedings). Any official or private individual who does not comply fully with judicial decisions handed down in habeas corpus or constitutional amparo proceedings shall be punishable by two to six years' imprisonment and a fine equivalent to 100 to 300 days' wage."

Administrative measures

35. On the strength of the existing political will, the National Congress adopted the Executive Power Organization Act (1997) and the Executive subsequently issued its regulations. The Executive will include within the Ministry of Justice and Human Rights a new ministerial post, namely a Vice-Minister for Human Rights, who will oversee and foster the training, promotion and dissemination of human rights both for public officials (police, armed forces and public officials in general) and for civil society, ensuring that the subject of human rights is taught in public and private universities and forms part of the study programme of law and related courses. The subject of human rights is also being included in the curricula of primary and secondary schools.

Judicial measures

36. Through the establishment of the Constitutional Court as guardian of respect for the rights, freedoms and guarantees established in the Bolivian Constitution and laws, the rule of law and the full exercise of the provisions of international conventions and treaties are consolidated.

Article 3

37. Article 151 (Inadmissibility) of the new Code of Criminal Procedure of 1999 provides that extradition shall not be admissible when "There are justifiable grounds for presuming that the extradition has been requested in order to prosecute or punish a person because of his political opinions, race, sex, religion, nationality or ethnic origin or that he will be subjected to cruel, inhuman or degrading treatment or punishment."

Article 4

38. Torture is characterized as an offence in article 295 (Harassment and torture) of the Penal Code. In addition, article 22 (Instigator) provides: "An instigator is a person who wilfully induces another to commit a wilful illegal act. He will be punishable by the penalty established for the perpetrator of the offence." Article 23 of the Code goes on to state: "An accomplice is a person who wilfully facilitates or cooperates in the perpetration of the wilful illegal act, in such a way that even without this help the act would have been committed, or who, on the basis of earlier promises, lends assistance or help subsequent to the act. An accomplice is punishable by the penalty established for the offence, extenuated in conformity with article 39."

39. Article 39 (Special extenuating circumstances) of the Penal Code stipulates: "In cases where this Code expressly provides for special extenuation, the following action shall be taken:

(1) A penalty of 30 years' rigorous imprisonment shall be reduced to 15;

(2) When the offence carries a minimum penalty of more than one year's rigorous imprisonment, the penalty imposed may be reduced to the legal minimum on the scale for rigorous imprisonment;

(3) When the offence carries a minimum penalty of one year's rigorous imprisonment or a penalty of ordinary imprisonment for a minimum term of more than one month, the penalty imposed may be reduced to the legal minimum on the scale for ordinary imprisonment."

Article 5

40. In domestic law, article 25 of the Judicial Organization Act stipulates that "Jurisdiction is the power possessed by the State to administer justice through the organs of the Judiciary, in accordance with the Constitution and the laws". Article 26 of the Act goes on to state that "Competence is the power possessed by a court or judge to exercise jurisdiction in a particular matter". Consequently, the examining district judge for criminal matters is the person designated by law to deal with the offence of harassment or torture.

Article 6

41. Within domestic legislation, article 5 (Definition and rights of the defendant) of the new Code of Criminal Procedure stipulates:

"A defendant is considered to be any person believed to have committed an offence who is brought before a body responsible for criminal prosecution. The defendant may exercise all the rights and guarantees accorded to him under the Constitution, the international conventions and treaties in force, and this Code from the first act in the proceedings to their completion.

The 'first act in the proceedings' shall be understood to be any charge made in a judicial or administrative body against a person presumed to have committed or participated in the commission of an offence.

Any person believed to have committed an offence has the right to be treated with due respect for his dignity as a human being."

42. In a similar vein article 84 (Rights of the defendant) stipulates:

"Any authority intervening in the proceedings shall ensure that the defendant is aware of the rights accorded to him under the Constitution, the international conventions and treaties in force, and this Code.

From the beginning of his detention, the defendant shall have the right to be assisted by his defence counsel and to talk to him in private.

If the defendant is detained in custody, the person responsible for the custody shall transmit to the judge within 24 hours any petitions or observations the defendant may make, and shall at all times facilitate his communication with defence counsel."

43. Article 23 (Requirements for pre-trial detention) states:

"Once the formal charge has been made, the judge may order the defendant's pre-trial detention on the substantiated application of the prosecutor or the complainant, when the following requirements are met:

(1) Sufficient evidence exists to support the view that the defendant has probably committed or been involved in a punishable act; and

(2) There is sufficient evidence that the defendant will not submit to trial or will obstruct the ascertaining of the truth."

Article 7

44. Domestic Bolivian legislation provides that extradition shall be governed by the international conventions and treaties in force and, subsidiarily, by the provisions of the Code of Criminal Procedure or, where no provisions exist, by the rules for reciprocity.

45. Any request must be submitted to the Ministry of Foreign Affairs and Worship and be accompanied by the most accurate possible identification of the person whose extradition is requested, information concerning his probable whereabouts and the authenticated text of the legal provision characterizing the offence. All the required documentation must be accompanied by an official translation in Spanish.

46. If the person in question is awaiting trial, the request must also be accompanied by the original or an authenticated copy of the charge against him, which must contain the characterization of the offence and details of the time and place of its commission, and the detention order issued by a competent judicial authority.

47. If the person has been convicted, the request must also be accompanied by the original or an authenticated copy of the sentence and certification of its executory copy stating, where appropriate, the length of sentence remaining to be served.

48. Competence to deal with extradition cases lies with the Supreme Court of Justice, which can order the pre-trial detention of the person whose extradition is requested for a maximum period of six months provided that proof is given of the existence of a conviction or detention order.

49. Once the extradition request has been received by the Supreme Court, the dossier is transmitted to the Office of the Attorney-General of the Republic in order that he may within 10 days make an application on the basis of its admissibility or inadmissibility. The Supreme Court will, within 20 days of receipt of the application, reach a decision on whether to grant or refuse the requested extradition (Code of Criminal Procedure, arts. 149-159).

Article 8

50. Following its ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Bolivian State undertakes to include torture among the extraditable offences in any treaty concluded by it and another State party.

51. Extradition is basically governed by treaties concluded between States and, subsidiarily, by the provisions of the Code of Criminal Procedure or the rules of reciprocity when there is no applicable norm.

Article 9

52. In the area of international judicial and administrative cooperation, maximum attention will be given to requests by foreign authorities provided that the requests are made in conformity with the provisions of the Bolivian Constitution, the international treaties in force and the Code of Criminal Procedure.

53. The request for cooperation will be transmitted to the Ministry of Foreign Affairs and Worship, which will bring it to the attention of the competent authority. Among other requirements, the request for assistance must contain: the identity of the requesting authority, with a brief explanation of the assistance requested and a description of the act under investigation; the characterization of the act as an offence and the official text of the relevant law; an indication of the time-frame for compliance; and any other information necessary in order to deal appropriately with the request.

54. Assistance may be refused when the request violates the rights, freedoms and guarantees provided for by the Constitution and international treaties in force, when it relates to acts which are being investigated or are the subject of proceedings in Bolivia, or when an enforceable judgement has been handed down in respect of the person and offence concerning which cooperation is requested.

55. When the acts requested require significant expenditure, the requested authority will, before proceeding to take the necessary action, ask the requesting authority to deposit the necessary resources to meet that expenditure.

56. If a criminal organization operating in Bolivia has international links, the Attorney-General's Office may coordinate the investigation with other countries or international organizations. To this end, it may set up joint investigation teams. Any investigation undertaken in Bolivia will be under the responsibility of a national prosecutor and subject to the supervision of the judges of the Republic. Any joint investigation agreement will be approved by the Attorney-General (Code of Criminal Procedure, arts. 138-148).

Article 10

57. The Human Rights Promotion and Protection Programme, financed by the Office of the United Nations High Commissioner for Human Rights, the United Nations Development Programme, and the Ministry of Justice and Human Rights (Project Bol/97/015), includes among

its objectives: strengthening national institutions for the protection, defence and promotion of human rights, under the leadership of the above-mentioned Ministry; and establishing coordination mechanisms with organizations of civil society and the State. The Programme began on 1 June 1999 and financial provision has been made up to 30 June 2001.

58. Programme activities include training and dissemination of information on human rights within the National Police, the armed forces and the Executive; the subject of human rights will be included in the curriculum or study programme of the public and private universities; it will also be incorporated at the pre-school, primary and secondary levels; and similar work will be done by the Ombudsman.

59. The subject of human rights has already been included and is being taught as part of the study programmes of the National Police academy and the armed forces' training college. Among the specific subjects taught are the right to security of person and personal liberty, and the Code of Conduct for Law Enforcement Officials.

Article 11

60. The Bolivian Constitution recognizes that no one may be detained, arrested or imprisoned except in the cases and in accordance with the procedures established by law; for the execution of the respective order it is required that it be issued by a competent authority and served in writing.

61. A person may not be held incommunicado except in manifestly serious cases and never for more than 24 hours.

62. An accused person is presumed innocent until his guilt has been proved.

63. The right of defence of the person on trial is inviolable.

64. From the moment of his detention or imprisonment, a person held has the right to be assisted by a defence lawyer (public defence or ex officio defence).

65. No person may be sentenced without first having been heard and judged in a legal trial; he may not undergo a penalty unless it has been imposed by an enforceable sentence and by a competent authority. A criminal conviction must be based on a law in effect prior to the trial, and subsequent laws may only be applied if they are more favourable to the accused.

66. Private papers and correspondence are inviolable and may not be seized except in cases prescribed by law and on the basis of a written and substantiated order by a competent authority. Seized or intercepted private documents have no legal effect.

67. No public authority nor any person or organization may intercept private conversations or communications by means of a device which will monitor or centralize them.

68. In addition, evidence is not recognized if it has been obtained by means of torture, ill-treatment, coercion, threats, deceit or violation of the fundamental rights of individuals, or if it has been obtained through information originating from an unlawful seizure or means (Code of Criminal Procedure, art. 13, second para.).

Article 12

69. The Public Prosecutor's Office is a constitutional body enjoying functional independence whose purpose is to promote the action of justice, to defend legality, the interests of the State and society, and to investigate ex officio any abuse of authority, irregularities or offences committed by judges, judicial officers, police officers or public servants in the performance of their duties.

70. The Public Prosecutor's Office accordingly takes the lead in the investigation of offences and promotes the public right of action before the jurisdictional bodies. To this end it undertakes all necessary acts in order to prepare the prosecution and to participate in the trial. It supervises effective compliance with the guarantees recognized by the Constitution and international treaties. In the investigation it takes into account not only the circumstances that substantiate the charge, but also any circumstances tending to exonerate the defendant; it makes its applications in conformity with this criterion.

Article 13

71. The Ombudsman Act (No. 1,818) of 22 December 1997 specifically stipulates that any natural or legal person who considers that he has been the victim of arbitrary administrative procedures or acts, human rights violations or other illegal acts may lodge a complaint with the Ombudsman, without impediment of any kind.

72. Complaints may be lodged in writing or orally, without need for the assistance of a lawyer. If the complaint is lodged orally, a full record must be prepared. If the complaint is not in Spanish, the Ombudsman will provide a translator.

73. On the application of a party and where appropriate, the Ombudsman will order that the complainant's identity be withheld.

74. All the powers of the State, authorities, officials and natural or legal persons performing public services are required to cooperate urgently and immediately with the Ombudsman in his investigations.

75. Official responsibility may be incurred if acts or omissions on the part of an authority or a public servant prevent, hamper or delay the lawful exercise of the functions of the Ombudsman and these acts or omissions constitute an offence. The facts of the case will be transmitted to the Public Prosecutor's Office for prosecution in accordance with the law.

76. The Human Rights Commission established by the Chamber of Deputies also receives complaints concerning violations of human rights. It undertakes the relevant investigation and refers the matter to the competent authority in order that appropriate action may be initiated (Constitution, art. 59 (22) and art. 67 (6)).

Article 14

77. Supreme Decree No. 24,793 of 4 August 1997 established the Compensation Fund in order to provide compensation for the relatives of persons who died or survivors who were injured by acts which have led to material and moral damage as a result of action by State officials, when this damage gives rise to objective responsibility, incurred by the State and determined by a competent international body. The Fund is financed with resources from the National Treasury and credit and donations intended specifically for these purposes.

78. The Code of Punishment stipulates that any person found to be criminally liable also incurs civil liability and is obliged to make good the material and moral damage caused by the offence.

79. The Code of Criminal Procedure states that a criminal indemnity action may be brought for the redress or compensation of damage caused by the offence; it may only be brought by the injured party against the perpetrator and accomplices in the offence and, where appropriate, against the person incurring civil responsibility. In the event of the death of the injured party, the action may be brought by his heirs.

80. Procedure for the redress of damage: once the conviction or decision ordering a security measure on the grounds of partial or complete disability has become enforceable, the complainant or the prosecutor may apply to the trial judge to order redress for the damage caused or appropriate compensation. A victim who has not been involved in the trial may elect to take this action within three months of being informed of the enforceable sentence.

81. The application must state: the identity of the applicant or his legal representative and his legal domicile; the identity of the defendant and the domicile to which a summons should be addressed; a specific and detailed statement of the damage suffered and its direct relationship with the proven unlawful act; the legal grounds invoked and the specific application for redress sought or the amount of compensation claimed. The application must be accompanied by an authenticated copy of the conviction or of the decision ordering the security measure.

82. Once the application has been admitted, the judge will summon the parties and will confirm the agreements reached. Failing this, he will order the production of the evidence offered only with reference to the legitimation of the parties, the valuation of the damage and its direct relationship with the unlawful act.

83. Once the evidence has been produced and the parties heard, at the same hearing the judge will issue a decision dismissing the application or ordering the damage to be made good, with a specific and detailed description and the exact amount of compensation.

84. If the applicant fails to appear before the judge, he will be considered to have abandoned the application, which will be filed. If the defendant or any of the defendants fails to appear, the hearing will not be suspended, the results of the trial remaining binding.

85. The action for redress or compensation for injury will lapse two years after the conviction or the decision ordering the security measure has become enforceable (Code of Criminal Procedure, arts. 382-388).

Article 15

86. Articles 13 and 172 of the Code of Criminal Procedure state that the evidence shall be valid only if it has been obtained by lawful means and presented at the trial in conformity with the provisions of the Constitution and the Code. In addition, acts that infringe rights and guarantees established in the Constitution or international treaties, and also evidence obtained through information originating from an unlawful procedure or means, must be excluded as lacking any probative value.

87. Evidence obtained through torture, ill-treatment, coercion, threats, deceit or violation of the fundamental rights of individuals have no probative value.

Article 16

88. The following are among the most relevant articles of the Penal Code:

Article 295 (Harassment and torture): "Any official who harasses a detainee or allows him to be harassed shall be punished with imprisonment of between six months and two years.

If the official inflicts any kind of suffering or torture on the detainee, the penalty shall be increased to between two and four years of imprisonment.

If the torture causes injuries, the penalty shall be imprisonment of between two and six years; if it causes death, the penalty shall be 10 years' rigorous imprisonment."

Article 308 (Rape): "Any person who, by using physical violence or intimidation, obtains carnal access to a person of either sex, achieving anal or vaginal penetration or introducing objects for libidinous purposes, shall be liable to imprisonment for between 5 and 15 years.

Any person committing the above offences, even without the use of physical violence or intimidation, but taking advantage of the mental disability, seriously disturbed condition or a serious mental deficiency of the victim, or if the latter is unable to resist for any other reason, shall be liable to imprisonment for between 15 and 20 years."

Article 308 bis (Rape of a child or adolescent): "Whoever obtains carnal access to a person of either sex below the age of 14, through anal or vaginal penetration or by introducing objects for libidinous purposes, shall be punished with imprisonment for between 15 and 20 years, without entitlement to pardon, even without the use of force or intimidation and even where consent is alleged.

This penalty shall not apply to consenting relations between adolescents above the age of 12, provided that the age difference between them is not greater than three years and that no violence or intimidation has been used."

Lastly, article 321 bis (Trafficking in persons): "Whoever shall bring about, promote or encourage the entry into or exit from the country or movement within it of persons to engage in prostitution, by means of deceit, violence or threats, or renders them unconscious for this purpose, shall be punished with imprisonment for between four and eight years. If the victims are aged under 18 years, the penalty shall be 5 to 10 years' imprisonment.

If the victim is under 14 years of age, the penalty shall be 6 to 12 years' imprisonment, even in cases where the circumstances referred to in the above paragraph do not apply."

B. Legislative, judicial, administrative or other measures in force which give effect to these provisions

1. Legislative measures

89. The Legislature has adopted the following laws (see annex, "Report of the Human Rights Commission of the Chamber of Deputies").

Need for Constitutional Reform Act (No. 1,473) of 1 April 1993

90. This Act spelled out the need to reform the 1967 Constitution in order to carry out the necessary reorganization of the various branches of government, particularly the Judiciary, to establish a Constitutional Court and thereby apply a constitutional system of justice, and to strengthen the Public Prosecutor's Office.

Constitutional Reform Act (No. 1,585) of 12 August 1994

91. This Act reformed the following articles of the Constitution: 1 (Multi-ethnic and multicultural), 116 (Structure of the judiciary), 117, 118 (Powers of the Supreme Court), 119 to 121 (Constitutional Court), 122, 123 (Judicature Council), 124, 125, 126 (Public Prosecutor's Office), 127 to 131 (Ombudsman), 171 (Application of customary law), 200, 203, 204, 205 (Municipal regulations), 215, 217 (National Police regulations) and 220.

Act (No. 1,602) relating to the Abolition of Imprisonment and Enforcement by Committal for Indebtedness, of 15 December 1994

92. Many people were formerly arrested, detained and imprisoned for not paying civil damages for which they were liable and were not released until they had paid them. With this Act, it was decided to stop arresting, detaining and imprisoning people for indebtedness, given that the American Convention on Human Rights (the "Pact of San José") stipulates in article 7, paragraph 7, that "No-one shall be detained for debt" except in specified cases such as non-payment of maintenance.

93. The main features of the Act are summarized below:

Article 6 (Abolition of enforcement by committal): "In cases of obligations of a financial nature, compliance with the obligations may be enforced solely on the property of the individual(s) concerned; enforcement by committal of the debtor shall not be admissible in any of the following cases:

Civil liability arising from the commission of unlawful acts characterized as offences;

Fiscal obligations;

Tax obligations;

Lawyers' fees;

Electoral fines;

Arrest of parents for obligations arising from unlawful acts committed by their children under the age of 16;

Obligations for producing testimony and for stamps and certificates of judicial deposits."

Constitutional Adaptation and Harmonization Act (No. 1,615), of 6 February 1995

94. This was the final stage in the constitutional reform and took into account new institutions which indirectly affected certain constitutional precepts and made it necessary to adapt and harmonize the Constitution. For example, articles 18 and 19 of the Constitution establish the remedies of habeas corpus and constitutional amparo, and at no stage of the reform was there any intention to modify, change or adjust these. However, under the 1967 Constitution the body responsible for review was the Supreme Court of Justice; with the reform of article 120, paragraph 7, it is now the responsibility of the Constitutional Court.

Executive Power Organization Act (No. 1,788) of 16 September 1997

95. This Act established, in article 11 C (Administration of the National Public Defence System), the powers of the Ministry of Justice and Human Rights. Article 22 C of Supreme Decree No. 24,855, the regulations relating to the Executive Power Organization Act, deals with setting policies and taking action to ensure that public defence policies, rules, programmes and mechanisms are properly administered. Supreme Decree No. 25,055, which supplements Supreme Decree No. 24,855 of 22 September 1997, sets forth, with regard to article 10, the duties of deputy ministers. Under paragraph (e), responsibility for the administration of the National Public Defence Programme and its effective functioning in the departments and rural areas of Bolivia is expressly delegated to the Deputy Minister for Human Rights.

Article 107 of the new Code of Criminal Procedure establishes the system of State defenders. The State provides defence counsel in criminal cases as a public service for any needy defendant for whom no defence lawyer has been appointed. The public defence system comes under the responsibility of the Executive.

96. The first training workshop for public defenders, on "Public defence: violations of due process", took place in Cochabamba from 31 July to 4 August 1995. It was organized by Management Sciences for Development (MSD) for the Bolivian office of the United States Agency for International Development (USAID) under the Administration of Justice Programme, which has several components and has received technical and financial support.

97. To sum up, the public defence system's main task is to allow those who prove they cannot afford to hire a professional defence lawyer to exercise their right to a defence. The system is free of charge and is expressly provided for in article 116 (X) of the Constitution.

Act relating to Sworn Recognizance to Avert Delays in Criminal Justice

98. Sworn recognizance is the promise made by a defendant to comply fully with the following conditions, which must be set down in the record drawn up for this purpose:

(1) To appear before the judicial authority when required;

(2) To attend hearings and comply with all obligations and procedural formalities required by law;

(3) Not to change address or leave the country without prior authorization from the judge hearing the case.

99. Sworn recognizance resulting from delays in justice: The judge or court, ex officio or on the application of a party, shall order pre-trial release with the sole requirement of sworn recognizance in the following cases:

(1) When the defendant has been detained for over 160 days and no order terminating the proceedings has been made;

(2) When over 18 months of detention have passed and no judgement of first instance has been handed down;

(3) When the defendant has been detained for over four years and no coercive judgement having res judicata status has been handed down;

(4) When pre-trial detention before or after the examination proceedings has lasted longer than the theoretical penalty for the offences for which the defendant was committed to trial, provided that the minimum sentence is not less than 180 days. In the event of concurrence of offences, the highest minimum sentence is taken into account. This provision does not apply when there has been a coercive judgement in any instance;

(5) When the accused has been acquitted or has served his sentence or is eligible for release on parole, when general or special remedies against the judgement have been applied for.

Penal Code Amendment Act (No. 1,768) of 10 March 1997

100. The following new penalty has been included in the Penal Code:

Article 179 bis (Failure to comply with decisions in habeas corpus and constitutional amparo proceedings). "Any official or private individual who does not comply fully with judicial decisions handed down in habeas corpus or constitutional amparo proceedings shall be punishable by two to six years' imprisonment and a fine equivalent to between 100 to 300 days' wage."

101. As a result of the imposition of this new penalty, both public officials and private individuals are required to comply with rulings handed down according to the law, which in the past they ignored or simply evaded and thus rendered unworkable in practice. The Legislature's decision to characterize non-compliance with judicial decisions as a criminal offence will make it easier to enforce rulings from now on.

Judicature Council Act (No. 1,817) of 22 December 1997

102. The inclusion of the Judicature Council in the Bolivian legal system is important as it has been given the vital task of administering the financial resources of the Judiciary and is responsible for discipline. With regard to financial resources, the idea is that the core function of judges, courts and magistrates is to pass judgement, that is, to administer justice, and not to perform unrelated tasks; in order to do this, they need the support of an adequate infrastructure. As to matters of discipline, if members of the Judiciary are to perform properly the tasks assigned to them under the Constitution, international conventions or treaties, and Bolivian law, they must have the competence to be able to carry out judicial work efficiently.

103. The following are the relevant articles of the Judicature Council Act:

Title V: Disciplinary system

Chapter I: Responsibility and misdemeanours

Article 37 (Responsibility). I. "Every judicial officer incurs civil, criminal and disciplinary responsibility for actions or omissions that may impede the normal performance of the activities of the Judiciary or impair the proper and timely administration of justice.

The system of disciplinary responsibility for the Supreme Court judges, Constitutional Court judges and Judicature Councillors shall be established by law."

Article 38 (Disciplinary misdemeanours). "Disciplinary misdemeanours are classed as very serious, serious and minor."

Article 39 (Very serious misdemeanours).

Article 40 (Serious misdemeanours).

Article 41 (Minor misdemeanours).

Ombudsman Act (No. 1,818) of 22 December 1997

104. The Ombudsman's task is to ensure that personal rights and guarantees are effective and respected over the entire range of administrative activity of the public sector. He is also responsible for the promotion, realization and defence of human rights and the dissemination of information on human rights.

105. Persons whose rights are infringed by public officials or whose human rights are violated can lodge a complaint with the Ombudsman. In addition, the Act authorizes the Ombudsman to institute proceedings ex officio.

106. With regard to complaints, the Ombudsman Act expressly provides as follows:

Title IV: Investigation, complaints, obligation to cooperate, confidentiality, responsibility, private documents, decisions and notifications.

Chapter II: Complaints

Article 19. (Competence to lodge complaints): "Any natural or legal person who considers that he has been the victim of arbitrary administrative acts or procedures, human rights violations or other illegal acts may lodge a complaint with the Ombudsman, without impediment of any kind."

Article 20. (Form of submission of complaints): "Complaints may be lodged in writing or orally, without need for the assistance of a lawyer. If the complaint is lodged orally, a full record shall be prepared. If the complaint is not in Spanish, the Ombudsman shall provide a translator.

On the application of a party and where appropriate, the Ombudsman shall order that the complainant's identity be withheld."

Article 21. (Time limit): "Any complaint to the Ombudsman shall be submitted within one year of the time at which the complainant learned of the events or omissions giving rise to the complaint. Lodging a complaint with the Ombudsman does not affect the time limits for administrative remedies or legal action as provided for by law.

Nevertheless, in exceptional cases determined as such by the Ombudsman and his deputies, he may consider complaints concerning events that occurred over a year before submission of the complaint."

Constitutional Court Act (No. 1,836) of 1 April 1998

107. The establishment of the Constitutional Court is important because of the function it performs, particularly as a regulatory monitor of rights, and its vital review role as constitutional monitoring body.

108. In order to ensure the faithful observance of the fundamental rights and constitutional guarantees in a State governed by the rule of law, the Constitutional Court Act provides for situations such as the following:

Chapter II (Direct or abstract action of unconstitutionality):

Article 54 (Legal basis): "The direct or abstract action of unconstitutionality shall be initiated against any law or decree or any kind of non-judicial decision that is contrary to the Constitution as an action not linked to a particular case."

Chapter IX (Remedy of habeas corpus):

Article 89 (Habeas corpus):

Chapter X (Remedy of constitutional amparo):

Article 94 (Legal basis):

Chapter XIII (Constitutionality of international treaties or conventions).

Code of Criminal Procedure Act (No. 1,970) of 25 March 1999, published on 31 May 1999

109. Among the provisions of the Code of Criminal Procedure are constitutional guarantees to ensure that investigations are carried out efficiently, judicial proceedings are oral and public, and the justice system is made more democratic by introducing lay judges, community justice and input from the victim, limiting the use of precautionary measures of a personal nature and monitoring delays in the justice system.

110. The most important articles of the Code defining the area of protection and judicial guarantees are summarized below:

Part One: General

Book One: Fundamental principles and provisions

Title I. Constitutional guarantees:

Article 1 (No conviction without prior trial and legal process): "No one shall be sentenced to any punishment except through an enforceable judgement handed down after a prior hearing in an oral and public trial, held in accordance with the Constitution, the international conventions and treaties in force, and this Code."

Article 2 (Legitimacy): "No one shall be tried by special commissions or tribunals, or be brought before jurisdictional bodies other than those established in accordance with the Constitution and the law before the offence was committed."

Article 3 (Impartiality and independence): "Judges shall be impartial and independent, subject only to the Constitution, the international conventions and treaties in force, and the laws.

In no event shall State bodies or natural or legal persons interfere in the handling of a particular trial. Should there be any interference, the judge shall apprise the Supreme Court of Justice of the actions affecting his independence. Where the source of the interference is the Judiciary itself, the report shall be submitted to the Judicature Council or the National Congress."

Article 5 (Definition and rights of the defendant): "A defendant is considered to be any person believed to have committed an offence who is brought before a body responsible for criminal prosecution. The defendant may exercise all the rights and guarantees accorded to him under the Constitution, the international conventions and treaties in force, and this Code from the first act in the proceedings to their completion.

The 'first act in the proceedings' shall be understood to be any charge made in a judicial or administrative body against a person presumed to have committed or participated in the commission of an offence.

Any person believed to have committed an offence has the right to be treated with due respect for his dignity as a human being."

Article 6 (Presumption of innocence): "Every defendant shall be presumed innocent and be treated as such at all times until declared guilty in an enforceable judgement.

The defendant may not be obliged to testify against himself and his silence shall not be used against him.

The burden of proof lies with the accusers and any presumption of guilt is prohibited.

In the case of persons in contempt of court, only information necessary for their apprehension shall be published."

Article 7 (Application of precautionary and restrictive measures): "The application of the precautionary measures established in this Code shall be exceptional. When there is doubt about whether to apply a precautionary measure or other provisions restricting the rights or capacities of the defendant, the most favourable one shall be applied."

Article 8 (Substantive defence): "The defendant, without prejudice to expert defence, shall have the right to defend himself, to intervene in all acts of the proceedings that involve evidence, and to make such requests and comments as he may deem fit."

Article 9 (Expert defence): "Every defendant has the right to be assisted and defended by a lawyer from the first act in the proceedings until the sentence has been served. This right may not be waived.

Defence counsel shall be appointed without any delay or formality at the time of arrest or detention or before the defendant begins to make a statement. If the defendant, when consulted, does not choose a lawyer or if the lawyer chosen does not immediately accept the brief, a defence counsel shall be appointed by the court."

Article 10 (Interpretation): "A defendant who does not understand Spanish shall have the right to choose a translator or interpreter to assist him in all acts necessary for his defence. If the defendant does not exercise this right or does not have the means to do so, a translator or interpreter shall be appointed by the court."

Article 11 (Victim's rights): "The victim may intervene in the criminal proceedings in accordance with the provisions of this Code, and shall have the right to be heard before any decision that may lead to the abatement or suspension of the criminal action and, where appropriate, to challenge such a decision."

Article 12 (Equality): "The parties shall have equal opportunities to exercise their powers and rights during the proceedings."

Article 13 (Legality of evidence): "Evidence shall have value only if it has been obtained lawfully and introduced into the proceedings in accordance with the provisions of the Constitution and this Code."

Article 34 (International treaties): "The rules on prescription contained in international treaties and conventions shall have primacy."

Article 71 (Illegality of evidence): "Prosecutors may not use against the defendant evidence obtained in violation of the Constitution, the international conventions and treaties in force, or the laws."

Article 72 (Objectivity): "Prosecutors shall ensure that the guarantees recognized by the Constitution, the international conventions and treaties in force, and the laws are effectively observed. During their investigation, they shall take into account not only the circumstances that substantiate the charge, but also any circumstances, tending to exonerate the defendant, formulating their applications in conformity with this criterion."

Article 84 (Rights of the defendant): "Any authority intervening in the proceedings shall ensure that the defendant is aware of the rights accorded to him under the Constitution, the international conventions and treaties in force, and this Code.

From the beginning of his detention, the defendant shall have the right to be assisted by his defence counsel and to talk to him in private.

If the defendant is detained in custody, the person responsible for the custody shall transmit to the judge within 24 hours any petitions or observations the defendant may make and shall at all times facilitate his communication with defence counsel."

Article 172 (Evidentiary exclusions): "Acts that infringe rights and guarantees established in the Constitution, the international conventions or treaties in force, this Code or other Bolivian laws, and also evidence obtained through information originating from an unlawful procedure or means, shall have no probative value.

Evidence introduced into the proceedings without following the procedures laid down in this Code shall likewise have no probative value."

Article 221 (Aim and scope): "Personal liberty and the other rights and guarantees accorded to every person under the Constitution, the international conventions and treaties in force, and this Code may be restricted only when this is essential to ensure that the truth is established, the proceedings follow their course and the law is applied.

The rules authorizing measures that restrict rights shall be applied and interpreted in accordance with article 7 of this Code. Such measures shall be authorized by a substantiated judicial decision, as regulated by this Code, and shall apply only for as long as they are necessary.

The defendant's liberty may not be restricted in order to guarantee the payment of civil damages, costs or fines."

Code on Children and Adolescents of 27 October 1999

111. This Code establishes and regulates the system of prevention, protection and comprehensive care that the State and society must provide to every child and adolescent in order to ensure their physical, mental, moral, spiritual, emotional and social development in conditions of freedom, respect, dignity, equity and justice.

Protection of Victims of Sexual Abuse Act (No. 2,033) of 29 October 1999

112. The articles of this Act cover the rape of children and adolescents, indecent acts, seduction of minors, trafficking in persons, and rights and guarantees.

2. Judicial measures

113. As laid down in the Constitution, the Judiciary includes the Constitutional Court, the Supreme Court of Justice, the Judicature Council, judges and courts.

114. Judgements or rulings handed down by either the Constitutional Court or the Supreme Court of Justice help to strengthen national jurisprudence, and lead, in particular, to amendments of the remedies of habeas corpus and constitutional amparo, abstract, remedial and incidental actions of unconstitutionality, or legal opinions on specific cases that may declare unconstitutional preliminary draft laws, decrees or any kinds of non-judicial decisions.

115. The Judicature Council, as the disciplinary body of the Judiciary, has responsibility for the strict observance of discipline by judicial officers in the application of the Constitution, treaties and laws.

3. Administrative measures

Programme for the Promotion and Protection of Human Rights

116. With the support of the Office of the United Nations High Commissioner for Human Rights, the United Nations Development Programme (UNDP), and the Ministry of Justice and Human Rights, an interdisciplinary team of Bolivian experts has been set up to deal with the following areas: criminal procedure, women, children, indigenous peoples, anthropology, the media and methodology.

117. The team began work on 1 June 1999, with the following objectives: working from the Ministry of Justice and Human Rights to strengthen national institutions for the protection, defence and promotion of human rights; and to set up mechanisms for coordination with civil society and State organizations.

Public Defence Programme

118. Supreme Decree No. 23,252 of 31 August (year not stated) established the Public Defenders Department and remained in force until abrogated by the Executive Ministries Act (No. 1,493) of 17 September 1993, which provided in article 17, paragraph (b), that the Ministry of Justice thereby established was to administer the National Public Defence Programme and the regulations relating to the Executive Ministries Act put into effect by Supreme Decree No. 23,660 of 12 October 1993. Supreme Decree No. 24,073 of 20 July 1995 governs the activity of the public defence system, regulating its organizational and financial structure and staff administration. The Act (No. 1,602) relating to the Abolition of Imprisonment and Enforcement by Committal for Indebtedness of 15 December 1994 and the Act (No. 1,685) relating to Sworn Recognizance to Avert Delays in Criminal Justice of 2 February 1996 grant it powers to intervene ex officio.

119. Article 2, paragraph 2 (a), of Supreme Decree No. 24,355 of 23 August 1996 refers to the national programme to support and protect older persons, which is consistent with Supreme Decree No. 24,073 on free legal aid in criminal cases for needy persons over the age of 65.

120. In his report to the National Congress, the Ombudsman describes the progress made in the defence and promotion of human rights and the dissemination of information on them (see annex).

C. Factors or difficulties affecting the practical implementation of these provisions

121. There is a priority need to strengthen the system of legal and administrative control, especially during the work of the Judicial Police and interrogations, and to upgrade military barracks, prisons, and police and military training colleges.

122. It is also hoped to develop training courses for the police and the armed forces on civil, political, economic, social and cultural rights and solidarity rights in rural areas.

123. The major obstacle in all these activities is the shortage of money and trained legal advisers in the field of human rights.

D. Concrete cases and situations where measures giving effect to these provisions have been enforced, including any relevant statistical data

124. Practical examples of steps taken by the victims of a number of relevant situations have been provided by the Human Rights Commission of the Chamber of Deputies (see annexed report). Information has also been provided by the Technical Judicial Police (see statistical data in annex).

UNITED
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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 2000

Note by the Secretary-General

1. In accordance with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the States parties shall submit to the Committee against Torture, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under the Convention, within one year after the entry into force of the Convention for the State party concerned. Thereafter the States parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. Accordingly, first supplementary (second periodic) reports under article 19, paragraph 1, of the Convention are due in 2000 from six States parties, on the following dates:

Chad	8 July 2000
Cuba	15 June 2000
Republic of Korea	7 February 2000
Republic of Moldova	27 December 2000
Tajikistan	9 February 2000
Uzbekistan	27 October 2000

3. The reports received from the States parties listed above will be issued as addenda to this document.

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Third periodic reports of States parties due in 2000

Note by the Secretary-General

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2. Accordingly, second supplementary (third periodic) reports under article 19, paragraph 1, of the Convention are due in 2000 from 10 States parties, on the following dates:

Croatia	7 October 2000
Cyprus	16 August 2000
Estonia	19 November 2000
Israel	1 November 2000
Jordan	12 December 2000
Nepal	12 June 2000
Romania	16 January 2000
Venezuela	27 August 2000
Yemen	4 December 2000
Yugoslavia	9 October 2000

3. The reports received from the States parties listed above will be issued as addenda to this document.

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Fourth periodic reports of States parties due in 2000

Note by the Secretary-General

1. In accordance with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the States parties shall submit to the Committee against Torture, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under the Convention, within one year after the entry into force of the Convention for the State party concerned. Thereafter the States parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. Accordingly, third supplementary (fourth periodic) reports under article 19, paragraph 1, of the Convention are due in 2000 from 26 States parties, on the following dates:

Afghanistan	25 June 2000
Argentina	25 June 2000
Austria	27 August 2000
Belarus	25 June 2000
Belize	25 June 2000
Bulgaria	25 June 2000
Cameroon	25 June 2000
Canada	23 July 2000
Denmark	25 June 2000
Egypt	25 June 2000
France	25 June 2000
Hungary	25 June 2000
Luxembourg	28 October 2000
Mexico	25 June 2000
Norway	25 June 2000
Panama	22 September 2000
Philippines	25 June 2000
Russian Federation	25 June 2000
Senegal	25 June 2000
Spain	19 November 2000
Sweden	25 June 2000
Switzerland	25 June 2000
Togo	17 December 2000
Uganda	25 June 2000
Ukraine	25 June 2000
Uruguay	25 June 2000

3. The reports received from the States parties listed above will be issued as addenda to these documents.

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Fourth periodic reports due in 2000

Addendum

UKRAINE*

[Original: RUSSIAN]
[31 July 2000]

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* For the initial report of Ukraine, see CAT/C/5/Add.20; for its consideration, see CAT/C/SR.52 and 53 and Official Records of the General Assembly, Forty-fifth Session, Supplement No. 44 (A/45/44), paras. 503-532. For the second periodic report, see CAT/C/17/Add.4; for its consideration, see CAT/C/SR.125 and Add.2 and Official Records of the General Assembly, Forty-eighth Session, Supplement No. 44 (A/48/44), paras. 116-132. For the third periodic report, see CAT/C/34/Add.1; for its consideration, see CAT/C/SR.283, 284/Add.1 and 287 and Official Records of the General Assembly, Fifty-second Session, Supplement No. 44 (A/52/44), paras. 122-152.

GE.00-46001 (E)

I. INTRODUCTION

1. This report is submitted pursuant to article 19, paragraph 1, of the Convention, which entered into force in Ukraine on 24 February 1987. It has been compiled in accordance with the general guidelines regarding the form and content of reports to be submitted by States parties under article 19, paragraph 1, of the Convention. It covers the period from 1997 to 1999.

2. Since submitting its third periodic report, Ukraine has withdrawn the reservations it entered when it signed the Convention on 27 February 1986 regarding its refusal to recognize the jurisdiction of the Committee against Torture. By Act No. 234-XIV of 5 November 1998, under which these reservations to the Convention against Torture were withdrawn, Ukraine fully acknowledged the Committee's jurisdiction over its territory, as provided for by articles 21 and 22 of the Convention.

3. The report was prepared as a collaborative effort by the Ministry of Justice, the State Penal Correction Department, the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Office of the Procurator-General, the Security Service, the Supreme Court, the Ministry of Labour and Social Policy, the Ministry of Public Health, the Ministry of Education and Science, and the State Statistical Committee.

4. Since the submission of its third periodic report in 1997, Ukraine has followed an unswerving policy of advancing the interests of the individual and according primacy to international law, as reflected in the Constitution and constantly evolving legislation.

5. The work of the Ukrainian penitentiary system is closely regulated by the Corrective Labour Code, which was adopted in 1970 and entered into force in 1971. Since Ukraine contributed to the elaboration of the Standard Minimum Rules for the Treatment of Prisoners in its capacity as a Member State of the United Nations, the Code incorporates the main principles outlined in these Rules. The Code conforms to the Rules and is still in force.

6. Since independence, more than 100 amendments and additions have been made to the Ukrainian Corrective Labour Code, all of which have been designed to humanize and democratize the execution and serving of punishments and ensure that the basic rights and freedoms of the individual are observed.

7. The systematic overhaul of the penal correction system in line with defined objectives is now in its ninth year, as mapped out in the reform blueprint promulgated by the Decision of the Cabinet of Ministers of 11 July 1991.

8. On the assumption that the penitentiary system should be an independent social entity, and in conformity with the reform blueprint and the recommendations made by experts from the Council of Europe, the Ukrainian President L.D. Kuchma promulgated a decree on 22 April 1998 establishing the State Penal Correction Department as a central government authority based in the Ministry of Internal Affairs Main Administration for Penal Correction. The same decree outlined an array of measures to reform the work of the penal correction system. On 31 July 1998 the President issued a decree ratifying the Regulations on the State Penal Correction Department.

9. On 11 December 1998 the *Verkhovna Rada* of Ukraine adopted the State Penal Correction Department (Consequent Amendments and Additions to Certain Legislation) Act, thereby establishing the legal framework for the autonomous operation of the Department.

10. On 12 March 1999 another presidential decree finally transferred the Department from the jurisdiction of the Ministry of Internal Affairs.

11. The reorganization of the Ukrainian penal correction system has simplified the administrative framework, which has become more flexible, responsive and efficient now that all resources are concentrated in a single department, i.e. the warding, control and security functions have been amalgamated. This arrangement also excludes extraneous functions and interference by officials not directly responsible for the work of the penal correction system.

12. In 2000 the *Verkhovna Rada* adopted the Correctional System (Structure and Personnel) Act, which stipulates that the proportion of institutional personnel shall be 33 per cent of the total population of convicted prisoners or persons deprived of their liberty.

13. In 1997 the Council of Europe published an assessment of the Ukrainian prison system as part of a joint programme of the European Community and the Council of Europe to reform Ukraine's legal system, local government and law-enforcement apparatus. The assessment was based on a study of Ukrainian law and its enforcement by 22 institutions in 8 different regions. There were also recommendations on reforming the penal correction system.

14. Great efforts have been made to ensure respect for human rights and the alignment of national legislation with European norms and standards, and in recent years significant steps have been taken to humanize criminal punishments, strengthen the rule of law, and stabilize the situation in custodial institutions.

15. To ensure proper conditions for the detention of remand prisoners and prisoners under sentence, in 1994 the Cabinet of Ministers adopted a special programme to align conditions in custodial institutions with international standards. The scheme yielded an extra 26,200 places. Efforts to increase the number of available places and improve conditions of detention are continuing.

16. The increase in the inmate population is seriously exacerbating problems connected with accommodation, job placement and the development of proper conditions for detainees and prisoners. Accordingly, as well as making efforts to increase the capacity of custodial establishments and upgrade them to international standards, Ukraine is working to reduce the size of the prison population.

17. Motivated by humanist principles, the *Verkhovna Rada* has passed amnesty laws during the period 1997-2000 which have reduced the number of convicted prisoners. However, the biggest decline in the number of convicted persons will be brought about by reforms of the justice system and the adoption of new criminal legislation making greater provision for non-custodial sentences. This more than anything else will defuse the accommodation crisis in prisons and remand units.

18. Future reform is intended, first and foremost, to give the penal correction system a more human face by taking account of international experience, humanist principles, the rule of law, democracy, fairness, and differentiated and individually tailored approaches to re-educating offenders. Also envisioned are radical changes to existing legislation, reorganization of the penal correction system, and the adoption of a new Code for the Execution of Criminal Penalties that takes account of international norms and standards and foreign experience. The draft Code is a watershed document which satisfies modern requirements and reflects international penitentiary practice. Among other things, it proposes to introduce innovative procedures and conditions for the execution of criminal penalties based on a differentiated and individual approach to reforming offenders. To this end, penal establishments will be reclassified with respect to their level of security, conditions of detention will vary according to how far the offender has been reformed, and inmates will have a guaranteed right to be visited, receive messages and packages, purchase food, and transfer their prison wages to personal accounts. Prisoners' welfare, health care and hygiene requirements will be more clearly regulated, and psychological, educational and other assistance will be provided. The reform makes provision for greater public involvement in work with offenders and heightened supervision of the work of penal establishments.

19. The Penal Correction Department has also prepared a prison service bill outlining the organizational and legal principles of the work of the service and specifying the legal and social protection available to personnel, thereby raising the prestige of the profession and providing job incentives.

20. In February 1998 and July 1999 a delegation from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited correctional establishments in Ukraine in order to evaluate compliance by prison authorities with the provisions of the European Convention of the same name. By and large, the Committee gave a positive assessment of efforts by the prison authorities to develop correctional establishments, but at the same time it issued a number of recommendations concerning the regime applied to prisoners convicted of capital crimes and the general conditions in which remand prisoners are held.

21. In order to ensure closer cooperation with CPT, on 20 November 1999 the Cabinet of Ministers issued Order No. 1257 designating the Penal Correction Department as the national liaison authority for relations with CPT. The Penal Correction Department has proceeded to carry out these recommendations. Many have been successfully implemented, and work is continuing to ensure compliance with the rest.

22. Particular attention has been paid to health care for special categories of prisoners in the correctional system, and closer contacts have been established between the medical units at penal correction establishments and treatment centres of the Ministry of Public Health. Urgent cases are dealt with exclusively in infirmaries of the Ministry.

23. All detainees and prisoners must undergo a compulsory medical check-up in order to avert the spread of infectious diseases.

24. Staff responsible for prison amenities, medical officers and warders perform constant checks to ensure that inmates' food is prepared on time and to a decent standard, and that sanitary and hygiene standards are maintained.

25. The following new procedures and methods have been introduced at correctional labour facilities:

Rooms have been set aside to perform acts of worship and religious services;

Representatives of religion pay visits at regular intervals;

Provision has been made for pastoral visits and psychological counselling;

The former cumbersome system of numbering correctional institutions has been superseded by a system whereby establishments are designated by their locality.

26. Organizational and operational ties with the military have been severed, and accordingly the supervisory, security and warding functions formerly exercised by Ministry of Internal Affairs troops were transferred to the Penal Correction Department in 1998-1999.

27. Other measures to improve amenities, medical care, food and job placement for detainees and prisoners are being implemented according to plan. Work is continuing to align conditions of detention in remand centres and prisons with international standards and to comply with the core provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These efforts are kept under constant review by the Government.

28. Ukraine has signed and ratified Protocol No. 6 to the European Convention on Human Rights providing for abolition of the death penalty in peacetime. Pursuant to the Criminal, Criminal-Procedure and Corrective Labour Codes (Amendment) Act (No. 1483-III) of 22 February 2000, the death penalty has been replaced by life imprisonment.

29. The following statistics apply in respect of persons convicted of capital crimes whose sentence has not been carried out:

January-February 1997 - 168 persons, 9 of whom were put to death (for sentences handed down in previous years);

1998 - 131 persons;

1999 - 120 persons.

30. No one convicted of a capital crime in 1998 or 1999 has been put to death, according to reports reaching the courts. Since the beginning of March 1997 there has been a moratorium on the use of the death penalty in Ukraine and no executions have taken place.

II. MEASURES AND CHANGES AFFECTING IMPLEMENTATION OF ARTICLES 1-16 OF THE CONVENTION AGAINST TORTURE

Articles 1 and 2

31. In the spirit of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention), article 28 of the Ukrainian Constitution states:

> "Everyone has the right to respect for his or her dignity. No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment."

This constitutional guarantee, which is inspired directly by article 2 of the Convention, is self-executing and an indispensable starting point for further amplification in other Ukrainian legislation.

32. Ukrainian law has built-in safeguards stipulating that criminal punishment may only be imposed in accordance with procedures recognized by law and pursuant to the judgement of a court. No accusation may be based on evidence obtained by unlawful means or assumptions (Constitution, art. 62; Criminal Code, art. 3). Article 15 of the Code of Criminal Procedure states that justice in criminal cases is dispensed by the courts alone, which are independent and subject only to the law (Code of Criminal Procedure, art. 18).

33. Article 22 of the Criminal Code stipulates that the purpose of punishment shall not be to inflict physical suffering or degrade the individual.

34. In accordance with article 2, paragraph 3, of the Convention, the current Ukrainian Constitution contains safeguards against the issuance and execution of manifestly criminal orders or directives (art. 60). Furthermore, in accordance with article 2, paragraph 2, of the Convention, the Constitution stipulates that a number of human rights and freedoms, including those referred to above, cannot be restricted in any circumstances, even in wartime or during a state of emergency (art. 64).

35. Article 7 of the Judicature Act states that justice in Ukraine is administered in strict accordance with Ukrainian legislation. In instances provided for by international agreements, the Ukrainian courts must apply legislation in accordance with the agreements concerned (Act of 24 February 1994). In dispensing justice in criminal matters, judges and people's assessors are independent and subject to the law alone.

36. Judges and people's assessors hear criminal cases on the basis of the law in circumstances precluding extraneous influence (Code of Criminal Procedure, art. 18).

Article 3

37. Neither the law nor practice has changed as far as these provisions are concerned. Ukraine is in compliance with these articles.

Article 4

38. "Torture" is not currently defined in Ukrainian criminal law as a specific criminal offence. A bill to make it so has been introduced in the *Verkhovna Rada*.

39. Paragraph 2 of the *Verkhovna Rada*'s Decision No. 1261-XIV introducing the bill to amend and supplement the Criminal Code with a view to making torture a specific criminal offence punishable in the harshest terms states: "The Committee of the *Verkhovna Rada* on legislative support for law-enforcement activity and measures to deal with organized crime and corruption shall be instructed to finalize a bill to amend and supplement the Criminal Code with a view to making torture a specific criminal offence punishable in the harshest terms. Consideration shall be taken of the proposals and comments by Ukrainian people's deputies and other entities possessing the right of legislative initiative, and the bill shall be referred to the *Verkhovna Rada* for second reading".

40. Article 22, paragraph 3, of the Code of Criminal Procedure explicitly prohibits attempts to obtain testimony from accused persons or other parties to proceedings by violence, threats or other unlawful means.

41. As noted in the previous (third) periodic report of Ukraine, torture and other cruel, inhuman or degrading treatment or punishment is broadly covered by articles 165, 166, and 167 of the Criminal Code (official misconduct).

42. A special provision in the Criminal Code (art. 175) states that, when conducting an initial inquiry or pre-trial investigation, officials who extract evidence under duress shall be held liable for their actions, and makes provision for straightforward or more serious instances of this offence. An interrogator who uses unlawful methods to extract evidence from an individual during an initial inquiry or pre-trial investigation shall be deprived of his liberty for up to three years. If this offence is compounded by the use of violence or bullying of the person undergoing interrogation, the offender shall be deprived of his liberty for between two and eight years.

43. The Liability of Officials (Amendments and Additions, Certain Legislation) Act of 11 July 1995 amended articles 165, 166 and 167 of the Criminal Code by increasing criminal liability for official misconduct.

44. Between 1996 and 1999 the Ministry of Internal Affairs received:

554 complaints of unlawful arrest, detention or search involving the use of physical force and discourtesy to members of the public (110 in 1996, 131 in 1997, 151 in 1998, 162 in 1999);

1,672 complaints of other unlawful acts (229 in 1996, 407 in 1997, 560 in 1998, 482 in 1999).

During the same period 864 internal affairs officers were convicted of official misconduct (243 in 1996, 237 in 1997, 204 in 1998, and 180 in 1999), of whom 568 were convicted of action *ultra vires* or abuse of official position.

Article 5

45. Neither the law nor practice has changed as far as these provisions are concerned. Ukraine is in compliance with this article.

Article 6

46. On 4 February 1994 the *Verkhovna Rada* adopted the Aliens (Legal Status) Act, article 22 of which states: "Aliens have the right to defend their personal, proprietary and other rights in the courts and other State bodies. Aliens shall enjoy the same procedural rights in legal proceedings as Ukrainian citizens". Article 33 of the Act states that if an international treaty to which Ukraine is a party lays down rules different from those contained in the Act, the rules in the international treaty shall prevail.

47. The State obligations provided for under this article of the Convention as regards the custody of alleged torturers and the conduct of investigations (checks) with a view to subsequent extradition and criminal prosecution are dealt with in more detail by international treaties on the extradition of lawbreakers. At the same time it should be noted that such treaties lay down general rules for extradition; they do not focus on specific offences.

Article 7

48. The current criminal procedure law of Ukraine law provides a precise definition of the procedure and grounds for undertaking investigative actions such as commencement of criminal proceedings, short-term detention of suspects, pre-trial detention, interrogation, indictment, and property searches.

49. Under article 5 of the Code of Criminal Procedure, charges may be brought only on the basis of and in accordance with procedures recognized by law. An investigating officer may remand a person in custody as a preventive measure only if authorized to do so by a procurator. An investigator or body conducting an initial inquiry is also empowered to detain a person on suspicion of committing an offence. Correct procedure dictates that detention must be officially recorded as soon as a detainee is arrested. No one may be detained for longer than 72 hours. An investigating officer must immediately notify a procurator of every arrest, and in any event no later than 24 hours after the person has been taken into custody. The procurator then assesses whether detention is justified and has 48 hours to decide whether the detainee should be remanded in custody or released. A supervisory apparatus consisting of departmental, procuratorial and judicial elements ensures that the investigator or body conducting an initial inquiry (the militia) follows correct procedure when conducting pre-trial investigations.

50. Article 3 of the Criminal Code reflects the basic tenets of criminal law, namely the rule of law and the principle that a person shall be held responsible for his acts when there is evidence of his guilt. Paragraph 2 of the article states explicitly that "no one shall be judged guilty of an offence or subjected to criminal penalty other than on the basis of a court judgement and in accordance with the law", thereby satisfying the provisions of article 9 of the Covenant.

51. Unlawful deprivation of liberty is an offence under article 123 of the Criminal Code.

52. As soon as an individual is taken into custody, he shall be entitled to the services of a defence counsel. If he cannot afford the services of a lawyer, his right of defence shall be guaranteed by the State.

53. All arrested or detained persons shall be informed without delay of the reasons for their arrest or detention, apprised of their rights, and, as soon as they are taken into custody, given the opportunity to defend themselves in person or through legal assistance in the form of defence counsel. All detainees have the right to appeal their detention in a court of law at any time (Constitution, art. 29).

54. Suspects and accused persons have a variety of rights as enumerated in articles 3 and 43-1 of the Code of Criminal Procedure, specifically the right to know the nature of the charges against them, to agree or refuse to give testimony, to submit evidence, to have defence counsel and to communicate with their counsel before initial interrogation, to lodge petitions, and to file complaints regarding the actions or decisions of persons conducting an initial inquiry, investigators, procurators, judges or the courts.

55. Remand prisoners and their defence counsel and legal representatives may appeal the procuratorial decision remanding the prisoner in custody at any stage in the preliminary investigation until the case is forwarded to a procurator together with the bill of indictment (Code of Criminal Procedure, art. 236-3).

56. During the period 1996-1999 investigators of the internal affairs agencies arrested 337,569 suspects (82,096 in 1996, 83,376 in 1997, 86,303 in 1998, and 85,794 in 1999). Preventive measures excluding deprivation of liberty were taken against 88,342 people, or 26.2 per cent of the total number arrested (20,489 in 1996, 21,102 in 1997, 23,771 in 1998, and 22,980 in 1999). During the same period a total of 850,582 accused persons were committed for trial (209,037 in 1996, 213,306 in 1997, 212,441 in 1998, and 215,798 in 1999). Of these, only 249,227 or 29.3 per cent were remanded in custody (61,607 in 1996, 62,274 in 1997, 62,532 in 1998, and 62,814 in 1999).

57. In the event of dismissal of criminal charges owing to a lack of evidence that a crime has been committed or the impossibility of proving the suspect's involvement in a crime, or if a court hands down a judgement of acquittal, the body conducting the initial inquiry, the investigator, the procurator or the court must apprise the individual of the procedure for seeking redress and must take the necessary steps to compensate the individual in respect of wrongful conviction, indictment, detention, enforcement of preventive measures, and unlawful prolongation of a fixed punishment after the entry into force of a criminal law nullifying the penal consequences of the original offence (Code of Criminal Procedure, art. 53-1).

58. Persons taken into custody in connection with criminal proceedings are detained in strict compliance with the relevant provisions of the Constitution, the Universal Declaration of Human Rights, and other international legal norms and standards concerning the treatment of prisoners. The Pre-Trial Detention Act of 30 June 1993 proscribes actions intended to cause physical or mental suffering or to degrade the individual.

59. In order to ensure full and strict compliance with the requirements of the Universal Declaration of Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Ukrainian Constitution, the Militia Act, the Pre-Trial Detention Act, and other regulatory acts concerning such matters, the Ministry of Internal Affairs has taken a variety of organizational and practical steps to improve the conditions in which arrested or detained persons are held in special militia facilities. A programme to develop the temporary holding facilities run by the internal affairs agencies has been drawn up, which provides for measures to safeguard the rights and legitimate interests of persons detained in such facilities, including repayment of debts in respect of inmates' food, provision of the required number of beds and exercise yards, ongoing supervision by medical services of the health and conditions of detention of special categories of prisoners, and the possibility for inmates to watch television and have access to libraries. A series of refresher courses for all categories of internal affairs personnel engaged in guarding or escorting detainees or monitoring the work of special militia facilities has been planned, developed and conducted over the course of the year.

60. To prevent the use of torture and other forms of violence in special militia facilities, Ministry of Internal Affairs departmental regulations stipulate that militia officers employed in such institutions are entitled to use physical force and special means of restraint against offenders only in exceptional circumstances. The list of circumstances is restrictive.

61. Whenever there is an incident involving improper treatment of persons detained in special militia facilities, senior officers of the municipal district authorities, administrative officials at the oblast level and the Ministry of Internal Affairs conduct a detailed review and, depending on the outcome, take appropriate measures including prosecution of guilty internal affairs officials.

62. The time limits for detention in special militia facilities are specified in article 11 of the Militia Act and article 263 of the Code of Administrative Offences ratified by the Decision of the Ukrainian Supreme Soviet of 7 December 1984, as amended and supplemented on 1 August 1997. Persons held for administrative offences may be kept in administrative detention for a maximum of three hours. If necessary, a person may be detained for up to 72 hours in order to establish his identity or clarify the circumstances of an offence provided that a procurator is notified in writing within 24 hours, or for up to 10 days when the offender has no identity papers, if so authorized by a procurator. Persons guilty of petty hooliganism; insulting or knowingly failing to comply with the directions or orders of a militia officer, volunteer militia officer or member of the armed forces; or openly exhorting others to defy the directions of a militia officer, may be detained until their case is heard by a judge or the chief officer (or deputy chief officer) of an internal affairs authority. The same stipulations apply to persons who fail to observe the procedure for organizing and holding meetings, rallies, marches and processions, who are in contempt of court, or who engage in unauthorized street trading.

63. Article 32 of the Code of Administrative Offences states that administrative detention is the appropriate sanction for certain varieties of administrative offence. Its use is restricted to exceptional circumstances, and the period of detention must not exceed 15 days. District (municipal) courts and judges are empowered to order the use of administrative detention.

64. Article 11 of the Militia Act empowers the militia to detain suspected vagrants in special units, on the authority of the procurator, for up to 30 days.

65. Article 6 of the Judicature Act establishes the right of Ukrainian citizens to a judicial remedy in respect of attacks on their honour, dignity, lives, health, personal liberty and property.

66. The Code of Criminal Procedure (Certain Articles concerning the Right of Defence of Suspects, Accused Persons and Defendants) (Amendment and Supplement) Act of 23 December 1993 introduced changes to article 44 of the Code, which stipulates that defence counsel may become involved in a case from the moment charges are preferred, or, if a suspect is detained or remanded in custody as a preventive measure, from the moment the official record of detention or the committal order is served, and in any event no later than 24 hours following the suspect's arrest.

67. Under articles 4 and 5 of the Criminal Code, all persons (except individuals benefiting from diplomatic immunity) are liable under the Code if they have committed crimes in Ukrainian territory or have been brought before the Ukrainian courts, even if the crime of which they stand accused was committed outside Ukraine. In accordance with all currently applicable international treaties on judicial assistance in criminal matters, the Government pledges to institute criminal proceedings against Ukrainian nationals who have committed a crime abroad but who could not be extradited to the competent bodies of the State involved with a view to prosecution (procedure of transfer of proceedings). A list of international treaties on judicial assistance in criminal matters is annexed to this report*.

Articles 8 and 9

68. Ukraine decides on extradition issues and offers judicial assistance in accordance with the provisions of international treaties currently in force (see list in annex 2*). The Office of the Procurator-General is the coordinating body for the implementation of bilateral and multilateral international treaties on judicial assistance in criminal matters. It also assists the law-enforcement authorities of countries with which Ukraine does not have treaty relations, on a so-called "good-will" basis.

Article 10

69. The rules covering interrogation of suspects and accused persons, arrest, and detention as a preventive measure during the pre-trial investigation are regulated by section 2 of the Code of Criminal Procedure (chaps. 12 and 13). Pre-trial detention procedure is also dealt with in the Pre-Trial Detention Act, the Corrective Labour Code, and other legislative acts.

70. Persons taken into custody in connection with criminal proceedings are detained in strict compliance with the relevant provisions of the Constitution, the Universal Declaration of Human Rights, and other international legal norms and standards concerning the treatment of prisoners. Article 1 of the Pre-Trial Detention Act proscribes actions intended to cause physical or mental suffering or to degrade the individual.

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* Available for consultation with the secretariat.

71. Article 5 of the Ukrainian Security Service Act of 25 March 1992 defines the activities of the Ukrainian Security Service in relation to human rights. In performing its functions, the Service must uphold human rights and freedoms. Security agencies and their personnel must respect the dignity of the individual and treat people humanely. In exceptional circumstances, certain personal rights and freedoms may be temporarily restricted, in the manner and within the limits laid down in the Ukrainian Constitution and laws, with a view to preventing and detecting crimes against the State. Unlawful restrictions on legitimate human rights and freedoms are inadmissible and punishable under the law. If in the course of their duties the personnel of a security agency violate human rights or freedoms, the agency concerned must take steps to reinstate those rights or freedoms, compensate the moral and material injury suffered, and prosecute the guilty parties. The Ukrainian Security Service is required to furnish a written explanation to injured parties within one month, stating why their rights and freedoms were restricted. The injured parties have the right to lodge a complaint with the courts against unlawful actions by officials (employees) and agencies of the Ukrainian Security Service.

72. A special institute in Kiev and a similar college in Dnepropetrovsk provide occupational training for staff of the various agencies and institutions of the State Penal Correction Department. The Chernigov Law School is likewise affiliated to the Department.

73. Among the positive developments which have taken place in Ukraine since the consideration of the third report are:

(a) Replacement of capital punishment by life imprisonment. Under the Criminal, Criminal Procedure and Corrective Labour Codes (Amendment) Act of 22 February 2000, the death penalty has been replaced by life imprisonment. A new provision, article 25-2, has been introduced into the Criminal Code, which stipulates that particularly serious crimes are punishable by life imprisonment. The same sentence may also be imposed for offences specifically referred to in the Code if a court decides that deprivation of liberty for a fixed term is not appropriate. The Code further stipulates that offenders under 18 or over 65 years of age, or women who were pregnant at the time of the offence or at the time of sentencing, may not be sentenced to life imprisonment;

(b) Ban on State secrets containing information regarding breaches of human and civil rights and freedoms. The updated version of the State Secrets Act contained in the State Secrets (Amendment) Act of 21 September 1999 stipulates that information concerning breaches of human and civil rights and freedoms or unlawful actions by central and local authorities and officials may not be classified as State secrets. It follows that information of this nature may not be subject to blanket secrecy, nor may it be subject to reporting or publishing restrictions in the mass media. Moreover, no restrictions may be imposed on its divulgence or transmission to another State or an international organization (this refers to article 9 of the Convention);

(c) Legislative arrangements concerning the Commissioner for Human Rights under the jurisdiction of the Supreme Council (*Verkhovna Rada*). The Commissioner for Human Rights of the Supreme Council Act of 23 December 1997 states that the Commissioner for Human Rights (hereinafter, the Commissioner) exercises parliamentary supervision over observance of the constitutionally enshrined rights and freedoms of individuals and citizens and protects the rights of all persons in Ukrainian territory and within Ukrainian jurisdiction. The

Commissioner performs his functions independently of other State bodies and officials. The Commissioner's work supplements existing remedies for the protection of the constitutionally-enshrined rights and freedoms of individuals and citizens; he neither abrogates these remedies, nor does he review the competence of other State bodies to protect rights and freedoms or redress wrongs. Article 21 of this Act guarantees the protection of human rights in dealings with the Commissioner, i.e. everyone shall have unrestricted access to the Commissioner in accordance with the procedure provided for by current legislation. Persons deprived of their liberty may address written communications to the Commissioner or his representatives, in which case no restriction shall be placed on their right of correspondence. Communications by such persons must be forwarded to the Commissioner within 24 hours. Correspondence between the Commissioner or his representatives, and detainees, remand prisoners, persons in custody, prisoners in custodial institutions of a coercive or curative nature, or any other Ukrainian citizens, aliens or stateless persons irrespective of their whereabouts shall be exempted from censorship or checks. Persons in breach of this article are liable to prosecution under existing legislation (this refers to article 13 of the Convention);

(d) Presidential scrutiny of the legality of laws and regulations promulgated by the Ukrainian Security Service. A specially appointed official, the Presidential Commissioner on Monitoring the Work of the Ukrainian Security Service (hereinafter, the Commissioner), scrutinizes the work of the Ukrainian security services on an ongoing basis in accordance with article 32, paragraph 2, of the Ukrainian Security Service Act. According to the Regulations on continuous presidential scrutiny of the work of the Ukrainian Security Service ratified by Presidential Decree No. 1172 of 22 October 1998, the Commissioner's principal functions are to ensure that the constitutional rights of citizens and the law are observed by police units of the Ukrainian Security Service, and to verify that regulations, orders, directives, instructions and guidelines issued by the Service are in compliance with the Constitution and Ukrainian legislation. Presidential Decree No. 767/99 of 29 June 1999 ratified a corresponding Regulation on the registration of legally binding acts of the Ukrainian Security Service pertaining to organized searches for suspects, counter-intelligence and police work. This Regulation stipulates that laws and regulations issued by the Ukrainian Security Service concerning the rights, liberties and legitimate interests of individuals and citizens must be registered by the Commissioner. He may refuse to register a law or regulation if it does not conform to the Constitution or law of Ukraine. An unregistered law or regulation is deemed to be invalid (this refers to article 11 of the Convention).

Legal training for prison officers in the spirit of the Convention

74. Staff at remand centres administered by the Ukrainian Security Service attend regular courses on various legislative acts concerning the rights, liberties and legitimate interests of the individual, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (this refers to article 10 of the Convention).

75. Also on the subject of article 10, paragraph 34 of the third periodic report refers to article 5 of the Ukrainian Security Service Act, which states that, in the exercise of its functions, the Service must uphold human rights and freedoms, and that unlawful restrictions on legitimate human rights and freedoms are inadmissible and punishable under the law. Those provisions remain in force.

Article 11

76. In accordance with the blueprint for reform of Ukraine's internal affairs agencies approved by the Cabinet of Ministers on 24 April 1996, the penal correction system has been removed from the jurisdiction of the internal affairs apparatus. Likewise, in accordance with Cabinet Decision No. 1451 of 9 August 1999, the public security militia is no longer responsible for sobering up drunkards, a function that sits awkwardly with its other duties.

77. Owing to economic and social problems, some short-term detainees and remand prisoners have occasionally been held in custody for longer than the prescribed period. Cases of overcrowding have also been noted. This is because, in view of the overcrowding that exists in remand centres administered by the State Penal Correction Department, these units are unable to accommodate all the "special prisoners" from holding facilities who need to be housed in remand centres. Nevertheless, the Ministry of Internal Affairs is endeavouring to take all necessary steps to ensure that the period spent in custody by various categories of prisoners meets the defined standards.

78. Under the Act of 23 December 1993, articles 21 and 43 of the Code of Criminal Procedure have been updated as regards the right of defence of suspects, accused persons and defendants. Now, for the first time, article 21 stipulates that a person conducting an initial inquiry, an investigator, a procurator, a judge or a court must, before proceeding to interrogate a suspect, accused person or defendant, explain to him that he is entitled to defence counsel, and make an official record to that effect. Article 43-1 establishes the suspect's right to a defence counsel, to meet his counsel before the initial interrogation, and to request procuratorial verification of the lawfulness of his detention. Moreover, an Act of 15 December 1992 made it possible to challenge the use of detention as a preventive measure in the courts and instituted judicial verification of the lawfulness of and grounds for detention.

79. Article 236-3 of the Code of Criminal Procedure states that a detainee, or his defence counsel or lawful representative, may lodge an appeal against a procuratorial detention order with the district (municipal) court in the vicinity of the procurator's office concerned. Certain acts have been decriminalized, resulting in the repeal of 34 articles of the Criminal Code. These include articles 61 (sabotage), 64 (intent to organize and commit particularly serious crimes against the State and membership of an anti-Soviet organization), 65 (particularly dangerous crimes against the State to the detriment of another workers' State), 74 (evasion of military service or taxes in wartime), 80-1 (failure to report crimes against the State), 80-2 (concealment of crimes against the State), and 92 (crimes against the State or the public property of other socialist States).

80. Pursuant to the Criminal Code, Code of Criminal Procedure and Code of Administrative Offences (Supplement and Amendment) Act and the Decision of the Supreme Council on the introduction and enforcement thereof dated 7 July 1992, persons sentenced under articles 85, 87-1, 87-2, 146, 147-1, 149, paragraph 1, 150, 151, 152, 154, paragraph 4, 151-1, 154-4, 156, 195, 195-1, 196, 197, 214 and 224-1 of the Criminal Code were released after their offences were decriminalized. Sentences handed down in connection with articles 81, 82, 84, 86, 86-1, 149, paragraphs 2 and 4, 155-6, paragraphs 2 and 3, 168 and 215, paragraph 1, of the Criminal Code were adjusted to reflect the fact that the punishments prescribed thereunder had been mitigated.

81. The exposition of article 15 of the Criminal Code, which deals with self-defence, has been improved. The article also enshrines the universal right of self-defence.

82. A new provision, article 46-2, has been incorporated into the Criminal Code, which stipulates that deferred sentences shall be imposed on pregnant women and mothers of children under three. Another new provision (art. 480-3) has been added to the Code specifying the procedure for the enforcement and abrogation of deferred punishment for this category of women.

Article 12

83. Article 4 of the Code of Criminal Procedure states: "Courts, procurators, investigators and bodies conducting an initial inquiry are required, within their respective spheres of competence, to initiate criminal proceedings when the indicia of a crime are discovered and to take all steps according to law to establish the facts of the case and administer punishment".

84. Article 100, paragraph 2, of the Code of Criminal Procedure requires investigators and bodies conducting an initial inquiry to forward a copy of their decision to initiate criminal proceedings or, alternatively, to dismiss a case, to a procurator within 24 hours.

85. The Code of Criminal Procedure (Amendment) Act of 30 June 1993 specifies that an initial inquiry into a lesser crime must be conducted within 10 days of the perpetrator having been identified. In the case of more serious crimes, the initial inquiry must be conducted at least 10 days after proceedings have been set in motion. By an Act of 23 December 1993, a new paragraph was added to article 143 of the Code of Criminal Procedure specifying that defence counsel may be present during the interrogation of an accused person if the accused so desires, and in the circumstances specified in article 46, paragraph 3, of the Code, the presence of defence counsel is mandatory.

Article 13

86. An additional provision has been incorporated into the Code of Criminal Procedure which states that it is possible to lodge an appeal in the courts against a refusal to initiate proceedings, the dismissal of a case, or a procuratorial detention order. The procedure for hearing such appeals has been established.

87. Under article 22 of the Pre-Trial Detention Act, the Procurator-General of Ukraine and his subordinate procurators ensure compliance with the law in pre-trial detention facilities. In exercising this function, procurators may visit places of detention and prisons at least once a month, where they are required to hold face-to-face meetings with convicted prisoners and prisoners awaiting trial. When they receive complaints about administrative actions and decisions, procurators must check the facts and, if the allegations are justified, take appropriate measures to deal with the problem.

88. Procuratorial decisions and directives on compliance with established legal procedure and conditions of detention or custody must be implemented by the administration of pre-trial detention facilities. Failure to implement legitimate procuratorial demands without good cause is an offence under the law (Procurator's Office Act, art. 8).

89. The procuratorial system exercises its functions independently. State and government bodies, officials, the mass media, and voluntary or political organizations or movements and representatives thereof are not permitted to interfere in procuratorial supervision of compliance with the law or procuratorial investigation of actions exhibiting the indicia of a crime. The bringing to bear of any form of influence on a procuratorial officer with a view to obstructing the performance of his duties or procuring an unlawful decision is an offence according to law (Procurator's Office Act, art. 7).

90. Statistics indicate that, in the course of 1999, procurators made visits to 4,149 Ministry of Internal Affairs holding facilities, remand prisons of the Ukrainian Security Service, corrective-labour colonies and psychiatric hospitals under rigorous and strong surveillance regimes (compared with 3,780 such visits in 1998).

91. Last year procuratorial checks revealed a total of 5,507 assorted breaches of the law at confinement facilities (as against 4,626 breaches in 1998). As a result of their findings, procurators issued 1,435 instructions to rectify breaches of the law (compared with 1,230 in 1998); 455 protests against unlawful acts and decisions (381 in 1998); and 1,719 orders and directives on measures to deal with irregularities of various kinds (as against 1,512 in 1998). Disciplinary proceedings were set in motion against 1,942 staff members at confinement facilities (compared with 1,642 in 1998), and criminal proceedings were brought against 19 (15 in 1998).

92. Unfortunately, the official statistics cannot be broken down into separate categories of irregularities brought to light at confinement facilities. Thus, on the basis of these data, it is impossible to tell whether the irregularities were breaches of the Convention, and if they were, of what article. Even criminal prosecutions of staff members do not imply that they have committed acts of torture. Procuratorial checks also reveal cases of staff passing drugs to convicted prisoners, receiving bribes from them, and other offences.

93. In addition to special procuratorial supervision of compliance with the law in this area, as stipulated by article 55 of the Constitution, the rights and freedoms of individuals and citizens are protected by the courts. The same article states that everyone has the right to go to law to challenge the decisions, actions or omissions of the central and local authorities, officials and public servants.

94. The Parties to Criminal Proceedings (Security) Act makes provision for the use of means of protection during investigations and trials with respect to crimes involving torture.

95. Everyone has the right of recourse to the Commissioner for Human Rights of the *Verkhovna Rada* for the protection of his or her rights.

96. Following the exhaustion of domestic legal remedies, everyone has the right of recourse to the relevant international judicial institutions or relevant bodies of international organizations of which Ukraine is a member, or in which it participates, for the protection of his or her rights and freedoms.

Article 14

97. Pursuant to the Criminal Code, Code of Criminal Procedure and Code of Administrative Offences (Supplement and Amendment) Act and the Decision of the Supreme Council on the introduction and enforcement thereof dated 7 July 1992, an additional provision (art. 53-1) has been incorporated into the Code of Criminal Procedure requiring a body conducting an initial inquiry, an investigator, a procurator or a court to compensate citizens for injuries which result from unlawful actions on their part.

98. A supplementary provision, article 93-1, was added to the Code of Criminal Procedure on 22 April 1993; it concerns reimbursement of the costs of in-patient treatment for victims of crime. Under the Injury Compensation Act, which deals specifically with injuries to citizens resulting from unlawful actions by agencies conducting an initial inquiry or pre-trial investigation, the procuratorial system or the courts, Ukrainian citizens are entitled to claim compensation. Compensation is payable in full irrespective of the culpability of the official, agency conducting the initial inquiry or pre-trial investigation, procurator's office or court involved.

99. As regards rehabilitation, the individual concerned must apply to the procurator's office or court that issued the most recent judicial decision. If the individual disagrees with a court ruling or decision, he or she may contest it in a higher court by way of cassation.

100. Article 56 of the Constitution stipulates that everyone has the right to compensation at the expense of the State or local authorities for material or moral injury caused by the unlawful decisions, actions or omissions of central or local authorities and their officials or employees in the performance of their duties.

101. The procedure for payment of compensation to citizens in connection with the unlawful actions of agencies conducting an initial inquiry or pre-trial investigation, a procurator's office or a court, in addition to the grounds for compensation and the sum involved, are all dealt with in special Act No. 266/94-BP of 1 December 1994. This Act stipulates that compensation shall be payable in respect of the following types of injury:

(a) Wrongful conviction, indictment, arrest or detention, unlawful search, seizure or impounding of property in the course of a criminal investigation or judicial proceedings, unlawful dismissal from employment and other defects of procedure which prejudice a citizen's rights;

(b) Unlawful use of administrative detention or attachment of earnings, unlawful confiscation of property, or unlawful imposition of a fine;

(c) Unlawful police investigation.

102. In the circumstances referred to in article 14, paragraph 1, of the Convention, compensation is payable in full irrespective of the culpability of the official, agency conducting the initial inquiry or pre-trial investigation, procurator's office or court involved.

103. Under the Ukrainian Criminal Code, it is an offence to arrest, detain or compel a person to appear before the investigating authorities or the courts knowing such a step to be unlawful (art. 173). It is also an offence to initiate criminal proceedings against a person known to be innocent (art. 174) or for a judge to hand down a knowingly wrongful judgement, decision or ruling (art. 176).

Article 15

104. Neither the law nor practice has changed as far as these provisions are concerned.

Article 16

105. Acts of torture or cruel, inhuman or degrading treatment or punishment are emphatically prohibited throughout Ukrainian territory. Domestic law makes due provision for the prosecution of persons who commit unlawful acts of this nature.

UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Fourth periodic reports of States parties due in 2000

Addendum

Denmark*

[4 August 2000]

* For the initial report of Denmark, see CAT/C/5/Add.4; for its consideration, see CAT/C/SR.12 and 13 and Official Records of the General Assembly, Forty-fourth Session, Supplement No. 46 (A/44/46), paras. 94-122. For the second periodic report, see CAT/C/17/Add.13; for its consideration, see CAT/C/SR.229 and Add.2 and Official Records of the General Assembly, Fifty-first Session, Supplement No. 44 (A/51/44), paras. 33-41. For the third periodic report, see CAT/C/34/Add.3; for its consideration, see CAT/C/SR.287 and 288 and Official Records of the General Assembly, Fifty-second Session, Supplement No. 44 (A/52/44), paras. 171-188.

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Introduction

1. This report is submitted in pursuance of article 19 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force with respect to Denmark on 26 June 1987. The report is organized in conformity with the general guidelines regarding the form and content of periodic reports to be submitted by States parties under article 19 (1) of the Convention (CAT/C/14/Rev.1). Reference is made to the general description of Danish society in the core document (HRI/CORE/1/Add.58).

2. The report deals with changes in legislation and legal and administrative practice relating to the individual material provisions of the Convention that have occurred since the Government of Denmark submitted its third periodic report (CAT/C/34/Add.3). To the extent that no changes have occurred in legislation and legal practice since Denmark submitted its third report reference is made to Denmark's previous reports.

3. Statistical information is provided in annexes 1-5. Annex 6 contains information provided by the independent Rehabilitation and Research Centre for Torture Victims (RCT) on its activities. RCT and the International Rehabilitation Council for Torture Victims (IRCT) are financially subsidized by the Government. In 1999 RCT received DKK 90 million and IRCT DKK 6.2 million. Three further rehabilitation centres for torture victims receive approximately DKK 6 million together annually.*

I. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS IN RELATION TO THE IMPLEMENTATION OF THE CONVENTION

Articles 1 and 2

4. No new information.

Article 3

5. According to section 7 (1) of the Aliens Act (*udlændingeloven*), an alien is issued with a residence permit if the alien is covered by the Convention of 1951 relating to the Status of Refugees. The Refugee Board (*Flygtningenævnet*), which makes the final decision in asylum cases in the second instance, has stated that a residence permit pursuant to section 7 (1) of the Aliens Act is granted, inter alia, in cases involving a risk of torture, and where the persecution can be considered as falling within the Refugee Convention.

6. According to section 7 (2) of the Aliens Act, a residence permit is issued to an alien who does not fall within the Refugee Convention but who, for reasons similar to those listed in the Convention or for other weighty reasons resulting in a well-founded fear of persecution or similar outrages, ought not to be required to return to his country of origin (de facto status).

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* See list of annexes at end of document.

7. The general notes to the amendment of section 7 (2) of the Aliens Act effected by Act No. 473 of 1 July 1998 state that it is assumed that the de facto provision is administered in accordance with, inter alia, articles 3 and 16 of the Convention against Torture. It also appears from the general notes that it will remain so that the individual's well-founded fear of outrages on return that may lead to grant of asylum can be either an objectively based assumption that the asylum-seeker will be subjected to outrages on return, or the individual's considerable subjective fear as a consequence of the outrages to which the alien has been subjected prior to his flight to Denmark. It further appears that a residence permit can still be issued under the de facto provision, e.g. to victims of torture. The Refugee Board has stated that in cases where a risk of torture exists, its practice is to grant a residence permit under section 7 (2) of the Aliens Act if the persecution cannot be deemed to fall within the Refugee Convention.

8. In cases where it is found as a fact that the asylum-seeker has been subjected to torture, the asylum-seeker's obvious subjective fear, together with the fact that the asylum-seeker has previously been subjected to torture, will also, according to current practice, result in the asylum-seeker being deemed to fall within section 7 (2) of the Aliens Act, although a return is deemed not to entail any risk of further persecution. When assessing whether to grant a residence permit, the Refugee Board also emphasizes the nature of the torture, including the extent, severity, frequency and time of the outrages, seen in relation to the asylum-seeker's departure. Torture that has occurred a long time ago will normally not constitute a ground for asylum. The Board has thus refused asylum in some cases where the asylum-seeker had been subjected to torture 7-8 years prior to the application for asylum.

9. Annex 1 gives examples of cases where the Danish Immigration Service (*Udlændingestyrelsen*), which makes decisions in asylum cases in the first instance, has issued residence permits to asylum-seekers presumed to have been subjected to torture.

10. Annex 2 gives examples from the practice of the Refugee Board concerning the scope of application of section 7 of the Aliens Act in cases where torture was relied on as (part of) the asylum motive.

11. To some extent, the Danish Immigration Service, institutes medical and torture examinations of asylum-seekers. Reference is made to Denmark's third periodic report, Part II, paragraphs 17 and 18.

12. The Danish Immigration Service states that the institutes of forensic medicine are still requested to carry out torture examinations of asylum-seekers to the extent required by the Immigration Service. The number of requests varies, but is typically between 20 and 50 a year.

13. The Refugee Board states that in situations where the Board is in doubt about the correctness of the asylum-seeker's evidence on torture, the Board can institute a torture examination. In such situations, the Board chooses either to remit the case so that the Danish Immigration Service can institute the torture examination, or the Board itself institutes the examination. When the Board institutes a torture examination, the Danish Immigration Service is contacted and requested, via the Institute of Forensic Medicine (*Retsmedicinsk Institut*), to have a detailed examination of the asylum-seeker carried out to assess whether any clinical

findings can be characterized as caused by physical torture. In connection with the Board's decision to adjourn the case pending a torture examination, the asylum-seeker's consent is procured.

14. The Danish Immigration Service then contacts the Institute of Forensic Medicine at Copenhagen University, Aarhus University or the University of Southern Denmark, depending on the asylum-seeker's place of residence. The examinations are carried out with the assistance of interpreters so that the asylum-seeker explains his situation to a doctor. For a torture examination, a doctor will make a physical examination after an interview in which the asylum-seeker explains what he has been subjected to. An examination will also be made at the Clinic of Forensic Psychiatry (*Retspsykiatrisk Klinik*) where a psychiatric certificate is prepared. Moreover, other specialist examinations may be made.

15. In certain situations, the asylum-seeker has contacted Amnesty International's medical group. In such cases, the report of the medical group is included in the basis for deciding the case.

16. Where the Danish Immigration Service or the Refugee Board refuses to grant a residence permit to an alien under sections 7 or 8 of the Aliens Act (asylum), and where it is thus not possible to assume any risk of torture, according to section 32 a of the Aliens Act, which was inserted by Act No. 482 of 24 June 1992, the refusal also has to include a decision as to whether section 31 of the Aliens Act will prevent the alien from being returned if he does not leave voluntarily.

17. Pursuant to section 31 (1) of the Aliens Act, an alien may not be returned to a country in which he will risk persecution for the reasons set out in article 1 A of the Refugee Convention, or in which the alien will not be protected against being sent on to such country.

18. Pursuant to section 31 (2) of the Aliens Act, the prohibition against return provided for in subsection (1) applies correspondingly if the circumstances mentioned in section 7 (2) of the Aliens Act exist. This does not apply, however, if definite reasons are found for assuming that the alien presents a risk to Denmark's national security or if, after final conviction for a particularly dangerous crime, the alien must be assumed to present an immediate danger to the life, body, health or liberty of other persons. The provision must, however, be applied in compliance with Denmark's international obligations, including the prohibition, from which no derogation is possible, to be inferred from, inter alia, article 3 of the European Convention on Human Rights and article 3 of the Convention against Torture on return to a country where the alien is at risk of torture or inhuman or degrading treatment or punishment.

19. The prohibition against return under section 31 of the Aliens Act applies to the return of all aliens and not only the return of persons with a residence permit issued under section 7 or 8 of the Aliens Act (asylum). If an alien who has been refused asylum or is otherwise not entitled to stay in Denmark relies on section 31 in connection with his departure, the police can refer the case to the Danish Immigration Service or the Refugee Board in the form of a request for resumption of the asylum case or an application for asylum, respectively.

20. Act No. 421 of 1 June 1994 and Act No. 33 of 18 January 1995 introduced a provision in section 33 (7) of the Aliens Act, according to which an application for reconsideration of a decision under section 7 only suspends enforcement of the decision with a view to the time limit for departure if the authority that made the decision whose reconsideration is requested so decides. If the alien's time limit for departure has been exceeded, an application for reconsideration does not suspend enforcement of the decision.

21. If it turns out after expiry of the time limit for departure that new, relevant information comes to light in the individual case, or where, owing to events in the country of origin a new situation exists, or there is a decisive change of the situation in relation to the returning country, the immigration authorities may decide to resume specific cases and permit the alien(s) in question to remain in Denmark during examination of the cases, and the National Police, which are responsible for returning aliens, can stay the arrangements for return in general for a large or small group of cases on the basis of a request from the immigration authorities.

22. If an alien holding a residence permit for Denmark is subsequently expelled by court judgement because of an offence, the expulsion implies lapse of the residence permit previously issued (cf. section 32 of the Aliens Act). This also applies if the expelled alien holds a residence permit for Denmark under section 7 of the Aliens Act (asylum).

23. The prohibition against return under section 31 of the Aliens Act also applies in case of return of expelled aliens.

24. It should be noted in this connection that in a concrete case the Refugee Board had serious misgivings about deeming an alien who was a victim of torture to fall within section 31 (2), second sentence, of the Aliens Act, regardless of the gravity of the crimes committed in Denmark. In this connection reference is made to annex 2, paragraph 7, of Denmark's third periodic report.

25. Act No. 473 of 1 July 1998 made various amendments to the Aliens Act. The National Police have stated that police procedures concerning the treatment of cases of expulsion of aliens holding a residence permit under section 7 or 8 of the Aliens Act were changed as a consequence of the passing of this Act, which entered into force on 3 July 1998.

26. Under the rules then applicable concerning expulsion by judgement, the decision on expulsion of aliens had to include information relating to asylum law as to whether the alien could be deemed to risk persecution in his country of origin (cf. section 26 (1) (v) of the Aliens Act then in force). For the purpose of this assessment, the Refugee Board would issue an opinion (cf. section 57 (1) of the Aliens Act then in force).

27. The above amendment means that the courts no longer have to assess whether there is a risk that an alien will suffer harm in his country of origin or other countries in which the alien may be expected to take up residence, if such risk falls within section 7 (1) and (2) of the Aliens Act (cf. section 26 (1) (vii) of the Aliens Act).

28. As part of this amendment, a new section 49 a was inserted into the Aliens Act under which, prior to the return of an alien who has been issued with a residence permit under section 7

or 8 and who has been expelled by judgement, the Danish Immigration Service must decide whether the return will be contrary to section 31, unless the alien consents to return. A decision to the effect that the alien cannot be returned must also include a decision on issue or refusal of a residence permit under section 7 of the Aliens Act. One result of this amendment was that the Refugee Board no longer needed to issue an opinion under section 57 (1) of the Aliens Act then in force, for which reason this provision was repealed.

29. A decision made by the Danish Immigration Service under section 49 a to the effect that a return will not be contrary to section 31 is automatically deemed to be appealed to the Refugee Board, and the appeal suspends enforcement (cf. section 53 a (2) of the Aliens Act).

30. According to the *travaux préparatoires* of the provision of section 49 a, it is incumbent on the police to initiate the procedure under section 49 a of its own volition prior to the time of release (on parole) for the purpose of procuring the alien's consent to the return or of submitting the question whether a return would be contrary to section 31 to the Danish Immigration Service. To ensure, to the extent possible, that it has been clarified at the time of release (on parole) whether the return can be effected, the procedure must be initiated at least six months prior to the time of release (on parole). If a decision on expulsion has been made on the basis of quite short-term custodial sentences, it is presupposed that the procedure is initiated as soon as a final judgement has been pronounced so that any period of custody under section 35 of the Aliens Act becomes as short as possible.

Article 4

31. No new comments.

Article 5

Danish criminal liability for acts of torture abroad

32. On 7 November 1998, 15 resident persons originating from Chile laid an information against Chile's former President, Augusto Pinochet, with the Danish Director for Public Prosecutions accusing Pinochet of torture and other inhuman and degrading treatment in the years 1973-1988 in Chile. The Chilean residents requested that Denmark institute an investigation against Augusto Pinochet and that a request of extradition for prosecution in Denmark be made.

33. On 3 December 1998 the Director of Public Prosecutions (*rigsadvokaten*) stated that he found no basis for requesting extradition of Augusto Pinochet for prosecution in Denmark, as there is no Danish jurisdiction for the offences involved in the information.

34. The Chilean residents appealed this decision to the Danish Ministry of Justice, which stated on 29 January 1999 that the Ministry found no basis for altering the decision of the Director of Public Prosecutions. The Ministry of Justice thus endorsed the opinion of the Director of Public Prosecutions, according to which there is no Danish jurisdiction in the matter. The decision of the Ministry of Justice contains a detailed discussion of articles 5, 6 and 7 of the Convention, including particularly article 5 (1) (c). At the same time, the Ministry of Justice

requested the Director of Public Prosecutions to take steps to seek further information on the matters involved by the information - subject to the consent of the Chilean residents. The Director of Public Prosecutions was also requested, on the basis of such material, to consider the possibilities of seeking to include the matters reported in any prosecution in another country.

35. A report concerning an interrogation of one of the Chilean residents was then forwarded to the Spanish authorities in order, if possible, to include the matters in the criminal proceedings against Pinochet being conducted in Spain. The Ministry of Justice is considering whether the Chilean authorities should be contacted concerning the prosecution of Mr. Pinochet.

Article 8

36. By way of introduction, please refer to paragraph 17 of Denmark's second periodic report (CAT/C/17/Add.13) and paragraphs 38-39 of Denmark's third periodic report (CAT/C/34/Add.3).

37. On 26 May 2000 the Danish Parliament passed a bill (L 245) amending Act No. 1099 of 21 December 1994 on prosecution by the International Criminal Tribunal for the Former Yugoslavia. The purpose of the amendment is to implement the amendments of the Act on prosecution by the ICTY that are necessary in order for Denmark to make a general agreement with the Tribunal to transfer convicted offenders from the Tribunal for enforcement of the sentence in Denmark.

Article 9

38. No new information.

Article 10

Training of the police

39. As stated in Denmark's third periodic report (CAT/C/34/Add.3, para. 42) tuition in "Human Rights" has been introduced as an independent subject in the basic training of the police. This tuition is given by representatives from The Danish Centre for Human Rights (*Det Danske Center for Menneskerettigheder*) and the Rehabilitation and Research Centre for Torture Victims (*Rehabiliterings- og Forskningscentret for Torturofre*).

40. In collaboration with the Documentation and Advisory Centre on Racial Discrimination (*om Dokumentations- og rådgivningscentret om Racediskrimination*), another NGO and the National Commissioner of Police carried out a training programme called NAPAP (NGO And Police Against Prejudice) in 1999. The purpose of the training was to help the staff of the Copenhagen Police to perform their job professionally and competently in a culturally broad society so as to create mutual understanding, confidence and cooperation between the police and ethnic minorities. The programme was partially funded by the EU, and eight other EU member States participated in the project. The Danish programme consisted of 12 three-day courses, and it was attended by a total of 156 policemen from the Copenhagen Police.

41. With reference to paragraphs 44 and 45 of Denmark's third period report (CAT/C/34/Add.3), an illustrated textbook concerning police self-defence holds and techniques, including the use of handcuffs and police truncheon, was published in 1998. The findings of the medical review of the self-defence holds and techniques of the police, carried out in 1995-1996, have been incorporated into the textbook so that in the few cases in which, on a medical assessment or for other reasons, special care must be taken in the use of holds and techniques this has been stated in the texts of the relevant illustrations and also highlighted by a special font. The textbook has been distributed to all police districts and is used both in the basic Police Academy training of police candidates and in the courses for police officers on tactics and operative maintenance.

42. Since 1994, Danish police have been prohibited from using the "fixed leg lock", and the use of this particular kind of leg lock is consequently not included in the training or the textbook. Since Denmark's latest periodic report, the National Commissioner of Police has not received any reports from the police districts or from the District Public Prosecutors on incidents in connection with the use of "fixed leg lock", which have given rise to complaints or considerations of disciplinary proceedings.

43. In connection with the examination of a specific complaint in which a Peruvian national broke his arm when placed in a detention cell, the District Public Prosecutor for Copenhagen requested the National Commissioner of Police to consider describing in the pamphlet on police self-defence holds and techniques how the intake of alcohol can influence the threshold of pain, and to consider whether the opinion of the Medico-Legal Council (*Retslægerådet*) in that particular case might give rise to changes in the section of the pamphlet that describes arm twisting holds. On 23 May 2000 the Director of Public Prosecutions endorsed the decision made by the District Public Prosecutor in the case, and against this background the National Commissioner of Police is considering a change of the pamphlet on police self-defence holds and techniques.

Composition of the police

44. Reference is made to paragraph 43 of Denmark's third periodic report (CAT/C/34/Add.3). In recent years, at every occasion relating to recruitment for the police force, the National Commissioner of Police has emphasized his desire for a broadly composed police force in relation to ethnic multiplicity in view of the aim that the police force should reflect the composition of the population as far as possible, inter alia through representation of ethnic minorities. This has been done in connection with direct advertising, press releases in general, and particularly in connection with press releases on the occasion of appointment of new police officers and their start at the Police Academy.

45. In addition to the assistance given by the National Commissioner of Police towards establishing and implementing an evening class course aiming to qualify young people of an ethnic background other than Danish to seek employment with the police, etc., the National Commissioner of Police has similarly assisted the Danish Refugee Council (*Dansk Flygtningehjælp*) in establishing a similar eight-month course. At present no enrolments have been made for this course.

46. In February 2000, at a conference on ethnic equality, etc., held by the Council for Ethnic Equality (*Rådet for Etnisk Ligestilling*), the National Commissioner received a "baton" implying that in the year 2000 the National Commissioner of Police will focus on the issue of appointment to the police in general of a larger proportion of persons having an ethnic background other than Danish. The purpose of the project is partly to make young people with an ethnic background other than Danish interested in the police as a place of work, partly to identify any internal barriers in the police force keeping young people with an ethnic background other than Danish from seeking employment with the police.

Danish Immigration Service

47. Examination of asylum applications in the first instance is carried out by the Danish Immigration Service on the basis of, inter alia, information provided through interviews with the asylum-seeker. The Danish Immigration Service conducts the interviews with the asylum-seeker.

48. The Danish Immigration Service has stated that since the drafting of the third periodic report, the Service has taken several initiatives related to the examination of asylum applications to increase staff focus on and knowledge of potential torture victims. These initiatives include:

(a) All employees who conduct interviews with asylum-seekers as part of the processing procedure for asylum applications are thoroughly trained in interviewing techniques. This training is to give the staff enhanced cultural understanding and insight into psychological mechanisms, including insight into how persons who have been subjected to torture can be expected to react/not to react in the interview situation;

(b) All caseworkers receive a folder with material on torture. The folder includes guidelines on how to interview potential torture victims as well as a copy of selected decisions from the Committee against Torture;

(c) Visits to the Institute of Forensic Medicine are arranged regularly;

(d) In early 2000 the Immigration Service held a theme day on torture with participation from the Institute of Forensic Medicine, the University of Southern Denmark and the Rehabilitation and Research Centre for Torture Victims;

(e) In the spring of 2000, the Immigration Service appointed a reference group on the gathering of background information for use in the examination of asylum applications. The reference group includes representatives of the Danish Centre for Human Rights, the Rehabilitation and Research Centre for Torture Victims, and the International Rehabilitation Council for Torture Victims (IRCT). The task of the reference group is to discuss what information should be provided on the situation in the countries of origin of the asylum-seekers, etc.

Refugee Board

49. The Refugee Board has stated that when the Refugee Board considers appeals of refusals of asylum issued by the Danish Immigration Service, the applicant, together with his assigned counsel, has an opportunity, as a point of departure, to submit his points of view orally at a meeting with the members of the Board. During the Board meeting the assigned counsel and then the representative of the Danish Immigration Service ask questions of the asylum-seeker. In this connection, Board members can also ask questions of the asylum-seeker. Then the assigned counsel and the Danish Refugee Service present their arguments. Finally, the asylum-seeker can make his final comments on the case.

50. Article 3 of the Convention against Torture is part of the applicable law for the activities of the Refugee Board. When members of the Refugee Board and staff for the Refugee Board secretariat are appointed, they are made acquainted with legislation and international conventions, including the provisions of the Convention against Torture.

51. The annual report of the chairmanship of the Refugee Board further describes general asylum law problems and cases of principle that the Board has considered. The 1999 report, which was published in July 2000, thus has a separate section on the Board's examination of cases concerning torture.

Article 11

Act on Enforcement of Punishments, etc.

52. On 26 May 2000, the Danish Parliament passed an Act on Enforcement of Punishments, etc. (in the following referred to as the Enforcement Act) and an act amending various provisions in connection with implementation of the Enforcement Act (cf. Acts Nos. 432 and 433, respectively, of 31 May 2000). The Acts enter into force on 1 July 2001.* The purpose of the Acts is particularly to implement a complete statutory regulation of the enforcement of punishments, etc.

53. The Enforcement Act will apply to enforcement of prison sentences, sentences imposing a fine, suspended sentences and probation orders, community service and preventive detention. The Enforcement Act does not comprise measures in respect of mentally deviant persons under sections 68 and 69 of the Danish Criminal Code (*straffeloven*). The reason is that the general hospital sector and the social authorities are in charge of the implementation of a substantial part of these measures.

54. Further, the question of choice of penitentiary institution is regulated, including the criteria for allocation to an open or closed State prison or a local prison and subsequent transfer between penitentiary institutions. The Enforcement Act results in a relaxation of the conditions

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* Both Acts are based on report No. 1355/1998 on enforcement of punishments, etc., drafted by the Standing Committee on the Criminal Code (*Straffelovrådet*).

for allocating and transferring so-called negatively strong or vulnerable inmates to a closed State prison or a local prison (cf. in this respect also the paragraph below concerning special units for "negatively strong" inmates, i.e. those with the power to exert negative influence on other inmates). The Enforcement Act also governs inmates' rights and duties during their stay in the penitentiary institution. This applies, for example, with regard to access to association with other inmates, co-determination, work, training, leisure time activities and assistance in social and health matters. The Enforcement Act further includes provisions on the inmates' possibilities of contact with the community outside the penitentiary institution, such as right to leave, visits, exchanges of letters, telephone conversations, newspapers and books, etc., and the right to make statements to the media from inside the institution.

55. In addition, the Enforcement Act includes detailed regulation of the conditions for and the method to be applied in case of interference with inmates, that is, the right to search the inmate's person and quarters, photography and taking of fingerprints, use of force, exclusion from association, disciplinary punishment, etc. This also includes rules that strengthen the inmates' possibilities of obtaining compensation for unjustified interference during the serving of the sentence.

56. One provision regulates the question of enforcement of prison sentences in the hostels of the Prison and Probation Service and in institutions, etc., outside the Prison and Probation Service. This provision includes the requirement that convicted young offenders below the age of 18 must be placed in an institution, etc., unless essential considerations of enforcement make placement outside prison inappropriate. This provision must be seen in the light of Denmark's obligations under the United Nations Convention on the Rights of the Child. The question of placement of 15- to 17-year-olds is discussed in detail below.

57. The Enforcement Act also includes rules on questions concerning the release, including supervision, etc., by the probation office on release on parole, conditional pardon and temporary interruption of sentence as well as reporting, etc., in case of violation of terms. Moreover, the Enforcement Act includes examination rules making it obligatory for a prison, on its own initiative, to consider and decide on certain questions of essential importance to the inmate, such as permission to leave, release on parole and transfer to another prison for continued enforcement.

58. The Enforcement Act, moreover, results in an expansion of the inmates' possibilities of bringing before the courts certain vital decisions made as part of the enforcement of the sentence. The administrative decisions that an inmate can require to be brought before the courts are decisions that are similar to criminal proceedings or are otherwise of an especially interfering nature for the inmate. This includes decisions on calculation of sentences, retention of letters in consideration of the person injured by the offence, certain disciplinary punishments, confiscation and forfeiture, setting-off of compensatory amounts, refusal of and recommitment after release on parole and recommitment of a person subject to a conditional pardon as well as decisions on refusal of compensation for unjustified serving of a prison sentence for too long or segregation in a special cell as a disciplinary punishment for more than seven days.

59. The Act amending various provisions in connection with implementation of the Enforcement Act includes rules on a scheme of release on parole for persons sentenced to life imprisonment, according to which release on parole may be possible when 12 years of a life sentence have been served. In this connection the Enforcement Act includes rules on the duty to decide administratively on the question of release on parole again not later than one year after a decision refusing release on parole. In addition, it is possible to demand judicial review of decisions on refusal of release on parole when 14 years of the life sentence have been served.

60. The preparation of the Enforcement Act is mentioned in Denmark's third periodic report (CAT/C/34/Add.3), paragraph 57.

61. Concerning legislation on pre-trial custody in solitary confinement, reference is made to Part III of the report.

Placement of 15- to 17-year-olds

62. In 1991, Denmark ratified the United Nations Convention on the Rights of the Child. This Convention imposes a duty on the contracting States to ensure that deprivation of a child's liberty is only used as a last resort and for the shortest appropriate period of time, and that any child deprived of his liberty must be separated from adults unless it is considered in the child's best interest not to do so.

63. In connection with Denmark's ratification of this Convention, amended rules were introduced on the placement of young detainees, particularly so that the young offenders' association with others was subject to increased control, and special units were set up for young detainees at the Blegdamsvejen Prison and the Søbysøgård State Prison.

64. In the period from January 1994 to August 1996, these special units accommodated two to four young offenders on average. Experience showed that the scheme of special youth units entailed great disadvantages to the young offenders, particularly apparent in that the young offenders felt isolated both in relation to the other inmates and in relation to their families and relatives. Due to the distance to their home region it was often difficult for them to receive visits. This was inexpedient as this group in particular needs as close ties with their families as possible. Furthermore, these young offenders require many resources and are unresponsive to offers of education and work, and with the facilities available it was impossible to provide suitable motivation of the young offenders. They also felt encouraged to arrange their everyday lives in accordance with a special youth culture, expressing itself as a lack of understanding of cleaning, clearing up and general hygiene and the use of keeping their surroundings intact, etc. From stays at other institutions, these young offenders are used to receiving much support from teachers and therapists, whereas in the prison they had to live with self-management of their own affairs.

65. Against that background it was decided to change the placement scheme for the 15- to 17-year-olds and close down the special youth units at the Blegdamsvejen Prison and the Søbysøgård State Prison. This change became effective in January 1999.

66. Accordingly, to the extent possible 15- to 17-year-olds will be remanded in alternative custody in the secure social institutions. Those who cannot be remanded in alternative custody are placed in a local prison, as a starting point. To accommodate the requirement of keeping up contact with their families, etc., the local prison chosen should be a local prison near their residence, if possible. It must be assessed, however, on the basis of information available on the current occupancy composition, etc., whether another local prison should be chosen instead.

67. In the individual local prison, after individual assessment, the 15- to 17-year-olds are placed in the unit best capable of fulfilling the requirement of protecting the young offender against unfortunate influence from co-inmates. If there are other inmates below the age of 18, it is assessed specifically whether it is appropriate to place them in the same unit, and whether association between them in general is appropriate.

68. In all cases where young offenders under the age of 18 have been sentenced to imprisonment, it must be assessed whether there is a basis for placing them in a treatment institution or the like under section 49 (2) of the Criminal Code.

69. Fifteen- to 17-year-olds who have to serve in an open prison are usually placed according to a principle of geographic proximity so that they can keep up contact with their families and can be released via educational institutions, social institutions, etc., located close to their residence. The principle of proximity may, however, be deviated from if deemed well founded upon an individual assessment. Upon specific assessment, the young offender will be placed in a unit in the individual open prison, where association with the other inmates is in the young offender's interest and where the requirement of protecting the young offender against unfortunate influence is best met.

70. Fifteen- to 17-year-olds who are to serve their sentences in a closed institution are placed, as formerly, in the Ringe State Prison, which is intended for young criminal men up to 23 years old and for women, with no age limitation, as experiences with this have been good and this prison can offer the young offenders a particularly targeted therapeutic programme.

71. The institutions are further under a duty to provide individual treatment programmes for the young offenders in each institution. The treatment programmes must be based on the individual's motivation and special qualifications. In this connection, the Department of Prisons and Probation (*Direktoratet for Kriminalforsorgen*) has appropriated funds for co-financing programmes.

72. The United Nations Committee on the Rights of the Child has been informed of the changes concerning placement of young detainees in Denmark's second periodic report on the Convention on the Rights of the Child of August 1998.

Special units for negatively strong inmates

73. In recent years, Danish prisons have seen increasing problems with the dominance over and exploitation of co-inmates carried out by "negatively strong" inmates.

74. There are two groups of negatively strong inmates. One group of negatively strong inmates includes those who belong to an organized group of persons, several of whom have been convicted of serious crimes. These persons typically have biker affiliations or affiliations with more organized gang crime, including drug-related crime and mafia-like organizations. The other group of negatively strong inmates consists of persons who - during their incarceration or during previous incarcerations - have exhibited such negative behaviour that the usual means of reaction cannot prevent them from exercising a highly negative influence on their co-inmates.

75. Common to both groups is that during their incarceration they exhibit such a strong negative influence on their co-inmates that they substantially impair conditions for such inmates, inter alia by procuring advantages at the cost of their co-inmates. It was therefore found necessary to separate these negatively strong inmates completely from the other inmates. Consequently, in 1999 the Danish Parliament decided that three units in closed institutions were to be set up for the negatively strong inmates.

76. The purpose of setting up special units for negatively strong inmates is solely to segregate them from the other inmates so that they have no possibility of exercising any negative influence on their co-inmates. According to the rules, placement in or transfer to such unit can be made, if deemed necessary, to prevent outrages against co-inmates or staff.

77. Inmates placed in these units associate with each other. As far as possible, they have the same content in their incarceration as other inmates in relation to work, training, social services, leisure time activities, outdoor exercise, visits, religious services, etc. The inmates also go by the ordinary rules for leave, release on parole, etc.

78. Confinement in these units is only allowed as long as the basis therefor exists. In this connection, the prison has a duty to be aware at all times whether this is the case.

Use of force against inmates

79. Annex 3 gives a survey of complaints from inmates in the period 1997-2000 to the Department of Prisons and Probation concerning unauthorized use of force and outrages, etc., committed by prison officers. It should be noted that complaints of the use of force by prison staff are first examined by the prison institutions, whose decisions can then be appealed to the Department, which thus makes its decision as the second instance. The Department is not aware of the number of complaints that are decided by the prison institutions without being appealed to the Department.

80. Annex 4 lists the use by prison staff of handcuffs, manual force, truncheons and tear gas in the period 1995-1999.

81. Together with the Danish Board of Health (*Sundhedsstyrelsen*), the Department of Prisons and Probation intends to make a medical assessment of the holds used by prison staff on inmates. Basically, the self-defence techniques must be gentle, easy to learn and remember, legally justified and medically approved. Concerning the so-called headlock (*sidehalsgreb*) the Department of Prisons and Probation has notified the institutions of the Prison and Probation Service that the hold should only be used in situations of absolute necessity, as, on request, the Danish body of medical experts has concurred in the discontinuation of the headlock owing to excessive risk of injury. Two new techniques have subsequently been introduced. Before their introduction, these holds were submitted to the Medico-Legal Council, which assessed that both these holds involve an essentially lower risk than the headlock. An initiative has been taken concurrently to train prison staff in the use of the holds in question.

82. Denmark's third periodic report (CAT/C/34/Add.3), paragraph 117, mentions an experiment with a handcuffs transport belt. The experiment yielded good results, and therefore the Department of Prisons and Probation is expecting to decide on the final design of the belt during the autumn of 2000 with subsequent drafting of rules on the use of the belt.

Disciplinary punishments, segregation in solitary confinement and confinement in security and observation cells, etc.

83. No major changes have been made to the rules concerned since Denmark's third periodic report. For a more detailed review of the rules, please refer to the third periodic report (CAT/C/34/Add.3), paragraphs 65-83.

84. Annex 5 gives a survey of disciplinary punishments used and compulsory segregation in solitary confinement in 1999 with the relevant reasons as well as the number of security cell and observation cell confinements.

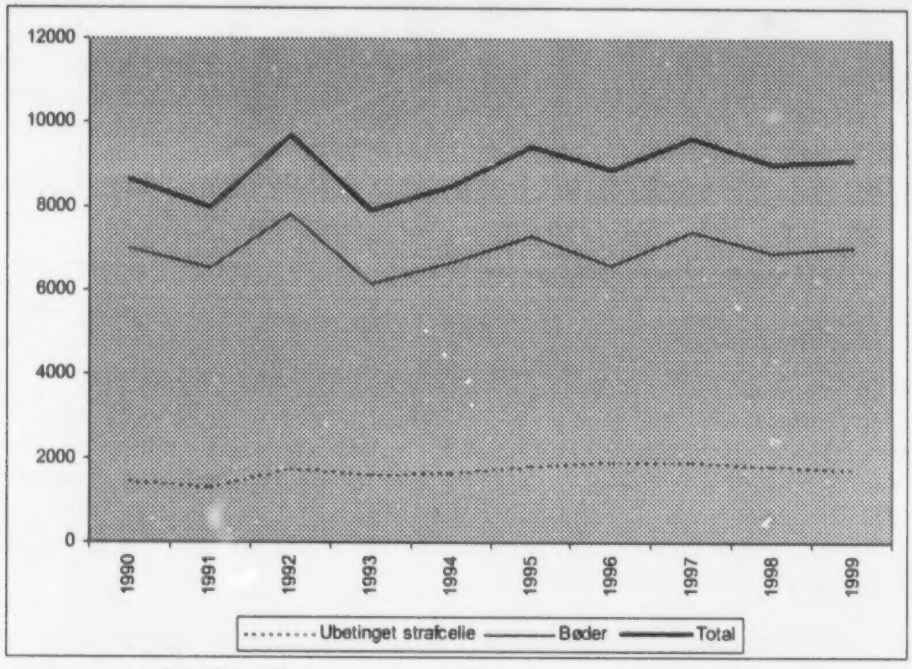
Disciplinary punishments

85. Inmates are subject to disciplinary punishment if they violate the rules of their stay. Such violation may be possession of drugs or alcohol, escape and violence or threats of violence. Depending on the nature and extent of the violation, the punishment may vary from a suspended fine to confinement in a special cell. A fine may correspond to a week's wages at the most, and the maximum duration for confinement in a special cell is normally four weeks.

86. In the past 10 years, the number of special cell confinements has been between 1,500 and 1,900 confinements a year. 1999 saw a total of 1,745 special cell confinements, which is

just under 100 less than in 1998. Compared with 1990, when the number of confinements was 1,458, this is an increase of 19 per cent. In 1999, a total of 7,037 fines were imposed as a disciplinary punishment, which was 77 per cent of all disciplinary punishments. In 1990, the proportion of fines was 81 per cent.

Trend in number of disciplinary punishments, 1990-1999



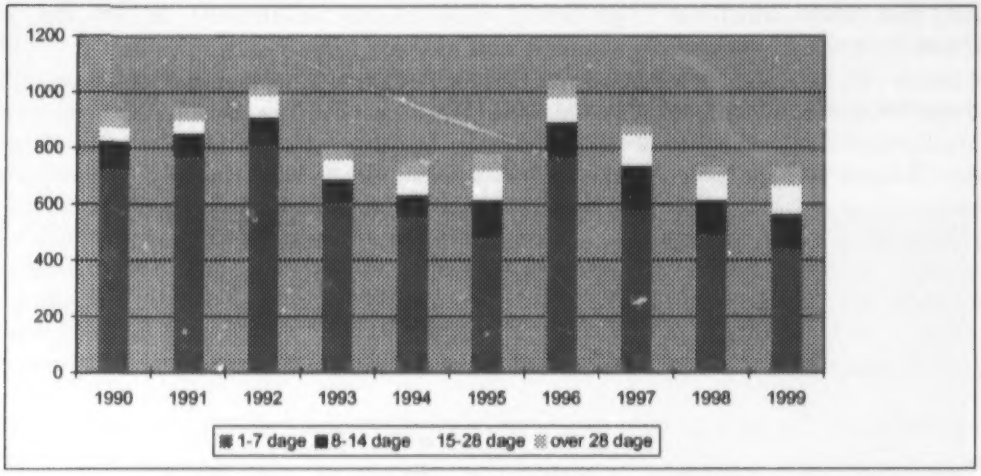
..... Special cell _____ Fines _____ Total

87. In 1999, disciplinary punishments were imposed most frequently for violations of the Criminal Code (35 per cent) and for violations of rules on order and security (30 per cent).

Solitary confinement

88. The Prison and Probation Service may decide that an inmate must remain in solitary confinement for the time being. This may be done, for example, to prevent escape or criminal activities. The reason may also be that it would be obviously unjustifiable to let the inmate involved associate with other inmates. Segregation in solitary confinement differs from a disciplinary punishment by its prophylactic and forward-looking purpose. The inmate is segregated in solitary confinement in a special unit of the prison or in his own cell.

Trend in the number of terminated compulsory solitary confinements, 1990-1999



1-7 days 8-14 days 15-28 days over 28 days

89. In 1999 the Prison and Probation Service made a decision on solitary confinement in 733 cases, which corresponds to the number in 1998. Thus, the drop in recent years in the number of confinements has been replaced by stagnation. In 1999, 60 per cent of the confinements were terminated within seven days. In 66 cases the confinement lasted for more than 28 days. The average duration of confinements of more than 28 days is 46 days. As in previous years, the main reason for solitary confinement in 1999 was to prevent criminal activity or that continued association was unjustifiable.

90. One case concerning solitary confinement of prolonged duration is pending before a Danish court, and another case concerning pre-trial solitary confinement is pending before the European Court of Human Rights.

91. The Committee has expressed its concern that solitary confinement is used as a measure against inmates who refuse to work (see A/52/44, para. 181). Today, the imposition of solitary confinement on inmates who refuse to work is used considerably less than before. Whereas there were 197 confinements on the grounds of refusal to work in 1996, there were only 85 confinements in 1999. The vast majority of confinements (71 per cent) had been terminated within three days. Reference is also made to Part III of the report.

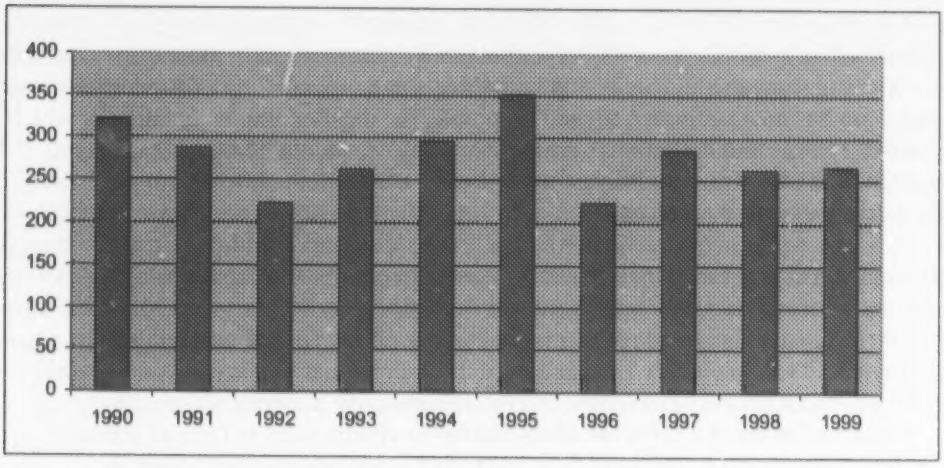
Confinement in a security cell

92. Most closed prisons and some of the large local prisons have security cells. A security cell can be used if necessary to avert imminent violence, overcome violent resistance or prevent self-mutilation or suicide.

93. The number of confinements in a security cell has fluctuated over the past 10 years. The lowest confinement figure in the period was recorded in 1992 with 223 confinements, and the highest confinement number was in 1995 with 352 confinements. During the latest three years, the confinement number has stabilized. In 1999 the number of confinements was 266, corresponding to the figure for 1998. Since the third quarter of 1999, the use of handcuffs instead of security cell confinement has been reported as security cell confinement. Therefore, as from the third quarter of 1999, such cases will statistically be recorded as security cell confinements.

94. Since 1992 the number of restraints in connection with security cell confinement has been recorded. In 1999 and 1998, restraint was used in 56 per cent of all security cell confinements.

Terminated security cell confinements, 1990-1999



Confinement in an observation cell

95. An inmate can be confined in an observation cell to prevent malicious damage, maintain peace and security in the institution, or where special observation is deemed to be necessary, e.g. at the suspicion of drug intake.

96. In recent years some institutions have converted security cells to observation cells, and a number of open prisons have had some solitary confinement cells approved for use for short-term observation cell confinements. Confinement in such cells has subsequently been recorded statistically as confinement in an observation cell.

97. As from the second half of 1994, the number of observation cell confinements has been recorded for statistical purposes. In 1995 there were 875 confinements, and the 1998 and 1999 figures were 938 and 943 confinements, respectively.

98. It should be noted that no confinement in a maximum security cell has occurred since Denmark's submission of the third periodic report.

Initiatives concerning staff at the places of work of the Prison and Probation Service

99. Denmark's third periodic report (CAT/C/34/Add.3), paragraph 119, mentions a proposal for the contents of courses and guidelines concerning the introduction of a formalized debriefing scheme at all places of work in the Prison and Probation Service. The scheme is to serve as a personal and collegial conflict stand-by arrangement and is to function as a follow-up of extraordinary, acute situations. It has just been decided to make the scheme permanent and expand it to more places of work. The Department has also signed a contract for crisis help with a private firm, according to which employees in a situation of crisis can contact the firm anonymously to get help. The firm can then refer to medical specialists, including psychiatric or psychological specialists, etc., depending on the problem. The help is granted free of charge to the employee regardless of the background of the problem, and whether the problem arose during or outside service.

100. Denmark's third periodic report (CAT/C/34/Add.3), paragraph 120, mentions a working group on customs and standards in connection with threats and violence, etc., from inmates. This working group has now submitted several proposals, the detailed implementation of which the Department of Prisons and Probation is now considering. It should be noted that several senior employees of the Copenhagen Prisons have already attended a one-week course for task force leaders held under police auspices.

101. Furthermore, as part of the Government's aggregate initiatives towards maladjusted young people, the Training Centre of the Prison and Probation Service has received a grant of DKK 1.4 million to finance increased recruitment of prison officers of a multi-cultural background. Increased recruitment is to be achieved through special employment initiatives, assistance from an ethnic equality consultant and the setting-up of a special six-month preparatory course for Danes of a different ethnic background who want to train as prison officers. The first class of about 20 people from the target group is expected to start in October 2000. The criterion for success is recruitment, training and permanent employment of such a large share of prison officers with a multi-cultural background that it reflects the composition in the Danish society. This means that the present 0.5 per cent of prison officers of an ethnic background other than Danish will be increased to about 4 per cent within the next 10 years. Another criterion for success is that at least 50 per cent complete the preparatory course, comprising Danish lessons, an introduction to Danish culture, tasks of the Prison and Probation Service and trainee periods in prisons.

Article 12

102. No new information

Article 13

Extended protection of witnesses

103. An action plan against organized crime and biker crime from March 1995 is mentioned in paragraphs 89-90 of Denmark's third periodic report (CAT/C/34/Add.3). In extension of the action plan, several initiatives have been taken to improve witness protection. The proposals of the action plan concerning exclusion of gang members from court hearings, early court examination of witnesses and extended criminalization of threats, etc., against witnesses have been implemented by Act No. 411 of 10 June 1997 (improvement of police investigation possibilities).

104. Furthermore, Act No. 349 of 23 May 1997 (improvement of legal position of victims of crime) provides for a number of initiatives of importance to witnesses who are also victims. The initiatives include extended access to have an assisting counsel assigned, setting-up of local counselling services for victims and a new extended pilot scheme of mediation in conflict councils. Furthermore a pilot scheme under the Ministry of Health concerning psychologist assistance to victims of violence and other particularly exposed groups has been made permanent.

105. On 18 May 2000 the Danish Parliament passed a bill (L 14) amending the Administration of Justice Act (*retsplejeloven*) and the Criminal Code, cf. now Act No. 428 of 31 May 2000, according to which the courts can make a pre-trial decision on hearing in camera, prohibition against reporting, prohibition against reporting names and on ordering the accused to leave the courtroom while a witness is giving evidence. The new provisions are based on a report on witness protection submitted in June 1998 by a working group under the Ministry of Justice, proposing a number of initiatives to ensure that a witness does not fail to appear for fear of reprisals.

Articles 14-16

106. No new information

II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

107. Reference is made to Parts I and III. No additional comments.

III. COMPLIANCE WITH THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

Incorporation of the Convention

108. When the Committee concluded its examination of Denmark's third periodic report, the Committee recommended that Denmark should consider incorporating the provisions of the Convention into domestic law (see A/52/44, para. 184).

109. The Government is of the opinion that Denmark fully meets the obligations following from the Convention. When Denmark acceded to the Convention, it was ensured that Danish law complied with the provisions of the Convention. It is ensured on a continuous basis that new legislation complies with the provisions of the Convention. Moreover, administrative authorities have a duty - to the extent relevant - to include the Convention in the interpretation and application of Danish law. Similarly, the Convention can be relied on before and is applied by Danish courts in the interpretation and application of Danish law. The Government is therefore of the opinion that the Convention - although not incorporated into Danish law - is a relevant source of law.

110. However, also against the background of the Committee's recommendations, the Government has decided to appoint a committee assigned to consider the issue of incorporation of international conventions on human rights into Danish law.

111. On 17 December 1999 the Ministry of Justice thus appointed the "Committee on incorporation of human rights conventions into Danish legislation (the Incorporation Committee)". The Incorporation Committee is broadly composed and includes representatives of two universities, the General Council of the Bar (*Advokatrådet*), the Danish Association of Judges (*Den Danske Dommerforening*), the Danish Centre for Human Rights, NGOs and ministries.

112. One assignment of the Incorporation Committee is to examine advantages and disadvantages of incorporation of the general human rights conventions into Danish law, including whether the International Covenant on Civil and Political Rights and its Optional Protocols, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention on the Elimination of All Forms of Racial Discrimination are suitable for incorporation into Danish law. In this connection the Incorporation Committee is to assess whether incorporation will result in better legal protection for the individual citizen, or whether there are other reasons why it must be deemed necessary or appropriate to incorporate the conventions.

113. The Incorporation Committee held its first meeting in February 2000 and is expected to conclude its work in the first half of 2001.

Incorporation of the definition of torture of the Convention - article 1

114. When the Committee concluded its examination of Denmark's third periodic report, the Committee recommended that Denmark should incorporate into its domestic law provisions on the crime of torture, in conformity with article 1 of the Convention (see A/52/44, para. 185).

115. Reference is made to paragraphs 30-36 of Denmark's third periodic report (CAT/C/34/Add.3), which describe the Danish Government's position on this issue. The Government thus still finds that the Criminal Code must be presumed to provide the requisite authority for imposing a suitably severe penalty in case of torture, including mental torture.

116. Reference is further made to the comments above on the considerations concerning incorporation of the Convention into Danish law.

Use of solitary confinement

117. When the Committee concluded its examination of Denmark's third periodic report, the Committee recommended that the use of solitary confinement be abolished, particularly during pre-trial detention, or at least that it should be strictly and specifically regulated by law (maximum duration, etc.) and that judicial supervision should be introduced (see A/52/44, para. 186).

118. Concerning the use of solitary confinement, on 18 May 2000 the Danish Parliament adopted a bill amending the Administration of Justice Act and the Criminal Code (L 14) and relating, inter alia, to pre-trial detention in solitary confinement (cf. now Act No. 428 of 31 May 2000).

119. The main purpose of the amendment is to obtain a substantial limitation in the use and duration of pre-trial detention in solitary confinement. In view of this, the rules of the Administration of Justice Act on pre-trial detention in solitary confinement have been amended. The new rules on solitary confinement are based on report No. 1358/1988 of the Standing Committee on Administration of Criminal Justice (*Strafferetsplejeudvalget*) on pre-trial custody in solitary confinement, but in several details, including on the use and duration of solitary confinement, the new rules are more strict than the proposals put forward by the Committee.

120. The amendment on solitary confinement includes a specification and tightening of the rules for implementation and continuation of solitary confinement. Moreover, shorter time limits for solitary confinement are introduced. For offences that may entail imprisonment for less than four years, the time limit of eight weeks previously applicable is reduced to four weeks. For offences that may entail imprisonment for four years but less than six years, the time limit of eight weeks is retained. For offences that may entail imprisonment for six years or more - where there has been no time limit so far - a time limit of three months has been fixed. This limit may only be exceeded in rare, exceptional cases if the court finds that essential considerations of clearing-up of the case render continued solitary confinement necessary despite the time in which the detainee has been held in solitary confinement until then.

121. Furthermore, the amendment provides extended access to oral hearing of appeals on solitary confinement and extended access to pre-trial court examination of the person charged and of witnesses for the purpose of lifting the solitary confinement after such securing of the evidence. In addition the administrative rules for treatment of detainees in solitary confinement have been changed to counter the negative effects involved in solitary confinement.

122. Finally, the new rules render it possible for pre-trial detainees to receive special compensation if they have been detained in solitary confinement. A person who has been remanded in custody in solitary confinement by order of the court thus has his sentence reduced by one extra day for every three days or fraction thereof of solitary confinement (that is, three weeks' solitary confinement results in a deduction of four weeks in the custodial sentence imposed).

123. Reference is also made to paragraphs 58-65 of Denmark's third periodic report (CAT/C/34/Add.3).

Segregation of inmates on the ground of refusal to work, etc.

124. When the Committee concluded its examination of Denmark's third period report, the Committee expressed its concern at the use of segregation in solitary confinement, especially as a preventive measure at pre-trial detention, but also as a measure against, e.g., inmates who repeatedly neglect the duty to work (see A/52/44, para. 33, and A/51/44, para. 181).

125. As mentioned above in Part I of the report (ad article 11), solitary confinement for inmates who refuse to work is now used considerably less than previously. Whereas there were 197 solitary confinements on the ground of refusal to work in 1996, there were only 85 solitary confinements in 1999 on that ground. The vast majority of confinements (71 per cent) had been terminated within three days.

126. The Department of Prisons and Probation states that, as a point of departure, neglect of the duty to work should only result in sanctions of a financial nature such as withdrawal of pay and imposition of a fine. However, for reasons of order and security it has been made possible to segregate inmates in solitary confinement in special cases. This can consequently occur at repeated cases of neglect of the duty to work. This possibility may only be used exceptionally in the open prisons. Furthermore, in case of a collective neglect of the duty to work or actions otherwise involving a risk of the order and security of the institution, solitary confinement is a possibility. Otherwise, it is up to the individual prisons to decide where the inmates are to stay during working hours if they refuse to work.

127. For reasons of security and order, the Department of Prisons and Probation finds it necessary to retain the possibility of imposing this measure. The Department receives regular reports from all institutions concerning the use of solitary confinement and carefully monitors the development in the use of this measure.

128. It should be noted that segregation in solitary confinement owing to refusal to work is not a disciplinary (backward-looking and penal) reaction, but a forward-looking measure to counter security and order problems, etc.

129. Concerning the aggregate use of solitary confinement, the Department states that whereas 1,044 decisions on solitary confinement were made in 1996, recent years have seen a considerable drop, and thus solitary confinement was used in 733 cases in 1999. Reference is also made to Part I of the report under the discussion of article 11, where further information is given on the use of solitary confinement.

Use of force by the police

130. When the Committee concluded its examination of Denmark's third periodic report, the Committee recommended that Denmark should reconsider the methods used by police in their treatment of detainees or during crowd control (see A/52/44, para. 187).

131. The National Commissioner of Police continuously monitors the development concerning the use of force by the police in connection with large violent demonstrations or riots, including the type and strength of the force it may prove necessary to apply. In this connection the

National Commissioner of Police endeavours to utilize all the experiences gained with a view to developing the tactically most appropriate task force concept that also satisfies the requirement of protection of human rights.

132. In the light of the experience gained from the unrest in the Nørrebro district of Copenhagen in connection with an European Union referendum in Denmark on 18 May 1993 as well as experience from the United Kingdom, the Netherlands and Germany, the National Commissioner of Police prepared a new tactical task force compendium for mobile units in the spring of 2000, which will be sent to all police districts in Denmark as operative guidelines for handling such problems. The concept is being developed continuously in line with developments in Denmark as well as in other countries.

133. Concerning the question of the use of dogs by the police, the National Commissioner of Police on 22 August 1997 issued regulations on the use of police dogs by the police as a means of force, following discussion with the Ministry of Justice. Reference is made to paragraph 22 of the minutes of the examination of Denmark's third periodic report (CAT/C/SR.288) and the conclusion of the Committee (A/52/44, para. 182). The regulations include both a codification and exemplification of the general substantive requirements of Danish law for the exercise by the police of their powers in relation to the use of means of force as well as international obligations in the field, and a series of formal reporting rules to ensure, inter alia, that the police observes the regulations in practice.

134. It appears from the regulations that the police may only use police dogs as a means of force when such use is deemed necessary, and only when less interfering means and methods are considered insufficient in the specific situation and the use of a police dog does not obviously exceed what is justifiable, taking the situation, the person involved and the interest involved into consideration. Furthermore, before using a police dog as a means of force, the police must indicate clearly to the person involved, if possible, that the police intend to use a police dog if the police directions are not obeyed, and the police must also ensure that the person has a possibility of obeying the directions of the police. The regulations also lay down rules on the power of decision in case of use of a police dog, and on how the dog should be led.

135. On the basis of the reports received by him, the National Commissioner of Police is of the opinion that no facts have come to light that indicate a need for specific rules in Danish legislation on the use of dogs by the police as a means of force or for an amendment of the existing regulations. In this connection, a police commission appointed in the summer of 1998 by the Minister of Justice has as one of its main assignments to consider the need for and, in the event, to draft a proposal for a new codified legal basis for police activities, including police powers to use force.

136. By a judgment of 7 June 1999 in a specific case on compensation after dog bites, the Supreme Court (Højesteret) found that the use of a police dog as a means of force in connection with the implementation of arrests of demonstrators is not in itself contrary to the principle of proportionality in section 758 of the Administration of Justice Act or article 3 of the European Convention on Human Rights.

Complaints against the police

137. The rules for examination of complaints against the police that entered into force on 1 January 1996 were described in Denmark's third periodic report and mentioned during the examination of this report. Reference is made to the report (CAT/C/34/Add.3, paras. 84-87) and to the examination (CAT/C/SR.288, para. 17).

138. With reference to the recommendation of the Committee on the examination of such complaints (A/52/44, para. 187), the police complaints board scheme has been evaluated after the first three-year period as provided at the introduction of the scheme.

139. The National Chairman of the police complaints boards concluded in his report for 1997 that the new scheme is perceived as confidence-inspiring and adequate both by the citizen and the police officer involved. In this connection, the National Chairman attached importance to the fact that the public criticism which had been aimed at the former complaints system had largely ceased after the police complaints boards had been set up.

140. The same general opinion was expressed in the evaluation of the scheme after the period 1996-1998, when both the individual regional police complaints boards and the other authorities and organizations involved in the examination of complaints were consulted. During the evaluation, a few proposals for minor adjustments of the scheme were put forward to facilitate the administrative handling of the complaints, but also the police complaints boards, the General Council of the Bar and the Danish Association of Assigned Counsel (*Landsforeningen af beskikkede advokater*) expressed as their view that there was no basis for changing the existing rules.

141. The conclusion of the evaluation was that the police complaints board scheme substantially functions satisfactorily and has helped increase popular confidence in the adequate examination of complaints against the police. The scheme is therefore continuing in its present form for the time being.

Complaints from inmates

142. When the Committee concluded its examination of Denmark's third periodic report, the Committee recommended that Denmark should ensure that complaints of ill-treatment lodged by detainees are handled by independent bodies (see A/52/44, para. 188).

143. As mentioned above under article 11, the Danish Parliament has just adopted an Act on Enforcement of Punishments (L 145, in the following referred to as the Enforcement Act). With the Enforcement Act, inmates gain extended access to a review of decisions made by the Prison and Probation Service as part of the enforcement. After the entry into force of the Enforcement Act in July 2001, inmates can require that administrative decisions that are similar to criminal proceedings or are otherwise of an especially interfering nature for the inmate be brought before the courts pursuant to section 112 of the Enforcement Act.

144. The decisions involved concern:

- calculation of the length of sentences;
- retention of letters in consideration of victim of the offence;
- disciplinary punishment in the form of confinement in a special cell;
- confiscation and forfeiture;
- setting-off of compensatory amounts;
- refusal of and recommitment after release on parole and recommitment of a person subject to a conditional pardon; and
- decisions on refusal of compensation for unjustified serving of a prison sentence for too long or confinement in a special cell for more than seven days.

145. Pursuant to the Ombudsman Act (*ombudsmandsloven*), Act No. 473 of 12 June 1996, the decisions of the Prison and Probation Service can further be brought before the Parliamentary Ombudsman to the extent that the new rules do not provide access to extended judicial review.

146. Thus, as previously, the decisions not comprised by the amendment and therefore not capable of being brought before the courts under the Enforcement Act can be brought before the Parliamentary Ombudsman, and the Ombudsman can also take up a matter for investigation of his own volition. The Ombudsman assesses whether authorities or persons falling within the sphere of the Ombudsman have acted contrary to applicable law or have otherwise been guilty of errors or omissions in the execution of their duties. Against that background, the Ombudsman can criticize, make recommendations, and in general state his opinion in the matter. If the Ombudsman's investigation of a matter shows that errors or omissions of major importance must be assumed to have been made, the Ombudsman must notify the matter to, inter alia, the Legal Affairs Committee of the Danish Parliament (*Folketingets Retsudvalg*) and the relevant minister.

IV. GREENLAND

147. The Commission on Greenland's Judicial System (*Den Grønlandske Retsvæsenskommission*) is expected to hold its last meeting in January 2001. The report of the commission will then be edited and translated into Greenlandic. The report is expected to be submitted in the second half of 2001 and will be forwarded to the Committee against Torture when it is available.

Provisions on institutional stays in Greenland

148. The Chief Constable of Greenland has the overall responsibility for enforcement of measures under the Greenlandic Criminal Code (*kriminalloven*). In Greenland, judgements of

custodial punishment are normally enforced in three open institutions. Furthermore, to a limited extent, offenders may be confined in police detention cells, for example for serving short-term sentences, and they may be assigned to the hostels of the Prison and Probation Service.

149. If the measures must be enforced in a closed institution, the convicted offenders are transferred to the Herstedvester State Prison in Denmark.

150. Pursuant to the Greenlandic Criminal Code and by authority from the Ministry of Justice, the Chief Constable of Greenland in 1999 drafted an Order on Institutional Stays in Greenland. The Order lays down the overall rules concerning rights and duties of convicted offenders and forms the basis of detailed regulation laid down by the Chief Constable in separate provisions on the issues of leave, visits, searches, use of force, segregation in solitary confinement, and the use and enforcement of disciplinary punishments.

151. In connection with the above provisions, the directors of the three institutions have laid down rules that apply in the respective institutions. The rules take into account the special circumstances in Greenland. Staff in each institution are taught the rules before their entry into force.

152. Both the Order and the rules laid down by the Chief Constable of Greenland and the local institutional directors have been translated into Greenlandic and are available to the convicted offenders.

List of annexes

1. Examples from the practice of the Immigration Service of cases where the service has issued residence permits to asylum-seekers presumed to have been subjected to torture.

2. Examples from the practice of the Refugee Board concerning the scope of application of section 7 of the Aliens Act in cases where torture was relied on as (part of) the asylum motive.

3. Complaints from inmates of unjustified use of force and outrages, etc., committed by staff. Cases decided by the Department of Prisons and Probation in 1997, 1998, 1999 and 2000 (until 22 May 2000).

4. Survey of the use of handcuffs, manual force, truncheon and teargas in the period 1995-1999.

5. Survey of number of disciplinary punishments, compulsory segregation in solitary confinement, security cell confinements and observation cell confinements in 1999.

6. Contribution by the Rehabilitation and Research Centre for Torture Victims.

The annexes are available for consultation in the files of the secretariat.